



GOV. MSG. NO. 1337

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 13, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 13, 2015, the following bill was signed into law:

HB1273 HD2 SD2 CD1

RELATING TO RENEWABLE ENERGY
ACT 228 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 13 2015

ORIGINAL

ACT 228

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO. 1273
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1 SECTION 1. The legislature finds that the development of
2 hydroelectric energy-generating facilities in Hawaii is vital to
3 the energy security and energy independence of the State.
4 Increased use of renewable energy resources will achieve broad
5 societal benefits, including resistance to oil price increases,
6 environmental sustainability, economic development, and job
7 creation.

8 The legislature also finds that some of the sites that are
9 targeted for the development of hydroelectric energy-generating
10 facilities in Hawaii are located on agricultural lands.
11 Although various types of renewable energy facilities may be
12 constructed on agricultural lands, hydroelectric facilities
13 currently are not included as a permissible use.

14 The legislature further finds that Hawaii's agricultural
15 land is a fundamentally important and diminishing resource that
16 is pivotal to the State's initiatives in food security.
17 Therefore, the location, construction, and operation of



1 renewable energy facilities must be considered in a manner that
2 promotes both food and energy security.

3 The purpose of this Act is to authorize construction of
4 hydroelectric facilities on agricultural lands; provided that
5 the hydroelectric facilities:

- 6 (1) Have a hydroelectric generating capacity of not more
7 than five hundred kilowatts;
- 8 (2) Comply with the state water code, chapter 174C, Hawaii
9 Revised Statutes;
- 10 (3) Are accessory to agricultural activities on
11 agricultural land for agricultural use only; and
- 12 (4) Do not adversely impact or impede the use of
13 agricultural land or the availability of surface or
14 ground water for irrigation use on parcels that are
15 served by the ground water sources or streams for
16 which hydroelectric facilities are considered.

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

19 "(d) Agricultural districts shall include:



- 1 (1) Activities or uses as characterized by the cultivation
- 2 of crops, crops for bioenergy, orchards, forage, and
- 3 forestry;
- 4 (2) Farming activities or uses related to animal husbandry
- 5 and game and fish propagation;
- 6 (3) Aquaculture, which means the production of aquatic
- 7 plant and animal life within ponds and other bodies of
- 8 water;
- 9 (4) Wind generated energy production for public, private,
- 10 and commercial use;
- 11 (5) Biofuel production, as described in section
- 12 205-4.5(a)(16), for public, private, and commercial
- 13 use;
- 14 (6) Solar energy facilities; provided that:
- 15 (A) This paragraph shall apply only to land with soil
- 16 classified by the land study bureau's detailed
- 17 land classification as overall (master)
- 18 productivity rating class B, C, D, or E; and
- 19 (B) Solar energy facilities placed within land with
- 20 soil classified as overall productivity rating
- 21 class B or C shall not occupy more than ten per

1 cent of the acreage of the parcel, or twenty
2 acres of land, whichever is lesser, unless a
3 special use permit is granted pursuant to section
4 205-6;

5 (7) Bona fide agricultural services and uses that support
6 the agricultural activities of the fee or leasehold
7 owner of the property and accessory to any of the
8 above activities, regardless of whether conducted on
9 the same premises as the agricultural activities to
10 which they are accessory, including farm dwellings as
11 defined in section 205-4.5(a)(4), employee housing,
12 farm buildings, mills, storage facilities, processing
13 facilities, photovoltaic, biogas, and other small-
14 scale renewable energy systems producing energy solely
15 for use in the agricultural activities of the fee or
16 leasehold owner of the property, agricultural-energy
17 facilities as defined in section 205-4.5(a)(17),
18 hydroelectric facilities in accordance with section
19 205-4.5(a)(23), vehicle and equipment storage areas,
20 and plantation community subdivisions as defined in
21 section 205-4.5(a)(12);



- 1 (8) Wind machines and wind farms;
- 2 (9) Small-scale meteorological, air quality, noise, and
- 3 other scientific and environmental data collection and
- 4 monitoring facilities occupying less than one-half
- 5 acre of land; provided that these facilities shall not
- 6 be used as or equipped for use as living quarters or
- 7 dwellings;
- 8 (10) Agricultural parks;
- 9 (11) Agricultural tourism conducted on a working farm, or a
- 10 farming operation as defined in section 165-2, for the
- 11 enjoyment, education, or involvement of visitors;
- 12 provided that the agricultural tourism activity is
- 13 accessory and secondary to the principal agricultural
- 14 use and does not interfere with surrounding farm
- 15 operations; and provided further that this paragraph
- 16 shall apply only to a county that has adopted
- 17 ordinances regulating agricultural tourism under
- 18 section 205-5;
- 19 (12) 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



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

9 (13) Open area recreational facilities;

10 (14) Geothermal resources exploration and geothermal
11 resources development, as defined under section 182-1;
12 and

13 (15) Agricultural-based commercial operations, including:

14 (A) A roadside stand that is not an enclosed
15 structure, owned and operated by a producer for
16 the display and sale of agricultural products
17 grown in Hawaii and value-added products that
18 were produced using agricultural products grown
19 in Hawaii;

20 (B) Retail activities in an enclosed structure owned
21 and operated by a producer for the display and



1 sale of agricultural products grown in Hawaii,
2 value-added products that were produced using
3 agricultural products grown in Hawaii, logo items
4 related to the producer's agricultural
5 operations, and other food items; and
6 (C) A retail food establishment owned and operated by
7 a producer and permitted under title 11, chapter
8 12 of the rules of the department of health that
9 prepares and serves food at retail using products
10 grown in Hawaii and value-added products that
11 were produced using agricultural products grown
12 in Hawaii.

13 The owner of an agricultural-based commercial
14 operation shall certify, upon request of an officer or
15 agent charged with enforcement of this chapter under
16 section 205-12, that the agricultural products
17 displayed or sold by the operation meet the
18 requirements of this paragraph.

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 3. 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 and for solar energy facilities, class B or C, shall be
9 restricted to the following permitted uses:

10 (1) Cultivation of crops, including crops for bioenergy,
11 flowers, vegetables, foliage, fruits, forage, and
12 timber;

13 (2) Game and fish propagation;

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

17 (4) Farm dwellings, employee housing, farm buildings, or
18 activities or uses related to farming and animal
19 husbandry. "Farm dwelling", as used in this

20 paragraph, means a single-family dwelling located on

21 and used in connection with a farm, including clusters



- 1 of single-family farm dwellings permitted within
2 agricultural parks developed by the State, or where
3 agricultural activity provides income to the family
4 occupying the dwelling;
- 5 (5) Public institutions and buildings that are necessary
6 for agricultural practices;
- 7 (6) Public and private open area types of recreational
8 uses, including day camps, picnic grounds, parks, and
9 riding stables, but not including dragstrips,
10 airports, drive-in theaters, golf courses, golf
11 driving ranges, country clubs, and overnight camps;
- 12 (7) Public, private, and quasi-public utility lines and
13 roadways, transformer stations, communications
14 equipment buildings, solid waste transfer stations,
15 major water storage tanks, and appurtenant small
16 buildings such as booster pumping stations, but not
17 including offices or yards for equipment, material,
18 vehicle storage, repair or maintenance, treatment
19 plants, corporation yards, or other similar
20 structures;



- 1 (8) Retention, restoration, rehabilitation, or improvement
- 2 of buildings or sites of historic or scenic interest;
- 3 (9) Agricultural-based commercial operations as described
- 4 in section 205-2(d)(15);
- 5 (10) Buildings and uses, including mills, storage, and
- 6 processing facilities, maintenance facilities,
- 7 photovoltaic, biogas, and other small-scale renewable
- 8 energy systems producing energy solely for use in the
- 9 agricultural activities of the fee or leasehold owner
- 10 of the property, and vehicle and equipment storage
- 11 areas that are normally considered directly accessory
- 12 to the above-mentioned uses and are permitted under
- 13 section 205-2(d);
- 14 (11) Agricultural parks;
- 15 (12) Plantation community subdivisions, which as used in
- 16 this chapter means an established subdivision or
- 17 cluster of employee housing, community buildings, and
- 18 agricultural support buildings on land currently or
- 19 formerly owned, leased, or operated by a sugar or
- 20 pineapple plantation; provided that the existing
- 21 structures may be used or rehabilitated for use, and



1 new employee housing and agricultural support
2 buildings may be allowed on land within the
3 subdivision as follows:

4 (A) The employee housing is occupied by employees or
5 former employees of the plantation who have a
6 property interest in the land;

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

10 (C) The agricultural support buildings shall be
11 rented or leased to agricultural business
12 operators or agricultural support services;

13 (13) Agricultural tourism conducted on a working farm, or a
14 farming operation as defined in section 165-2, for the
15 enjoyment, education, or involvement of visitors;
16 provided that the agricultural tourism activity is
17 accessory and secondary to the principal agricultural
18 use and does not interfere with surrounding farm
19 operations; and provided further that this paragraph
20 shall apply only to a county that has adopted



1 ordinances regulating agricultural tourism under
2 section 205-5;

3 (14) Agricultural tourism activities, including overnight
4 accommodations of twenty-one days or less, for any one
5 stay within a county; provided that this paragraph
6 shall apply only to a county that includes at least
7 three islands and has adopted ordinances regulating
8 agricultural tourism activities pursuant to section
9 205-5; provided further that the agricultural tourism
10 activities coexist with a bona fide agricultural
11 activity. For the purposes of this paragraph, "bona
12 fide agricultural activity" means a farming operation
13 as defined in section 165-2;

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

20 (16) Biofuel processing facilities, including the
21 appurtenances associated with the production and



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

7 For the purposes of this paragraph:

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

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

20 (17) Agricultural-energy facilities, including
21 appurtenances necessary for an agricultural-energy



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

11 As used in this paragraph:

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

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

18 "Agricultural-energy facility" means a facility
19 that generates, stores, or distributes renewable
20 energy as defined in section 269-91 or renewable fuel
21 including electrical or thermal energy or liquid or



1 gaseous fuels from products of agricultural activities
2 from agricultural lands located in the State.

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

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



- 1 (19) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this section, "agricultural education programs" means
10 activities or events designed to promote knowledge and
11 understanding of agricultural activities and practices
12 conducted on a farming operation as defined in section
13 165-2;
- 14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser or for which a
17 special use permit is granted pursuant to section 205-
18 6; provided that this use shall not be permitted on
19 lands with soil classified by the land study bureau's
20 detailed land classification as overall (master)



1 productivity rating class A unless the solar energy
2 facilities are:

3 (A) Located on a paved or unpaved road in existence
4 as of December 31, 2013, and the parcel of land
5 upon which the paved or unpaved road is located
6 has a valid county agriculture tax dedication
7 status or a valid agricultural conservation
8 easement;

9 (B) Placed in a manner that still allows vehicular
10 traffic to use the road; and

11 (C) Granted a special use permit by the commission
12 pursuant to section 205-6;

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

18 (A) The area occupied by the solar energy facilities
19 is also made available for compatible
20 agricultural activities at a lease rate that is



1 at least fifty per cent below the fair market
2 rent for comparable properties;

3 (B) Proof of financial security to decommission the
4 facility is provided to the satisfaction of the
5 appropriate county planning commission prior to
6 date of commencement of commercial generation;
7 and

8 (C) Solar energy facilities shall be decommissioned
9 at the owner's expense according to the following
10 requirements:

11 (i) Removal of all equipment related to the
12 solar energy facility within twelve months
13 of the conclusion of operation or useful
14 life; and

15 (ii) Restoration of the disturbed earth to
16 substantially the same physical condition as
17 existed prior to the development of the
18 solar energy facility.

19 For the purposes of this paragraph, "agricultural
20 activities" means the activities described in
21 paragraphs (1) to (3); [ex]



- 1 (22) Geothermal resources exploration and geothermal
- 2 resources development, as defined under section
- 3 182-1[-]; or
- 4 (23) Hydroelectric facilities, including the appurtenances
- 5 associated with the production and transmission of
- 6 hydroelectric energy, subject to section 205-2;
- 7 provided that the hydroelectric facilities and their
- 8 appurtenances:
- 9 (A) Have a hydroelectric generating capacity of not
- 10 more than five hundred kilowatts;
- 11 (B) Comply with the state water code, chapter 174C;
- 12 (C) Are accessory to agricultural activities on
- 13 agricultural land for agricultural use only; and
- 14 (D) Do not adversely impact or impede the use of
- 15 agricultural land or the availability of surface
- 16 or ground water for all uses on all parcels that
- 17 are served by the ground water sources or streams
- 18 for which hydroelectric facilities are
- 19 considered."

20 SECTION 4. Statutory material to be repealed is bracketed
 21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2015;
2 provided that the amendments made to section 205-4.5(a), Hawaii
3 Revised Statutes, by section 3 of this Act shall not be repealed
4 when that section is reenacted on June 30, 2019, pursuant to
5 section 3(1) of Act 52, Session Laws of Hawaii 2014.

APPROVED this 13 day of JUL , 2015



GOVERNOR OF THE STATE OF HAWAII

