
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) Comply with instream flow standards established by the
7 commission on water resource management;

8 (2) Are accessory to agricultural activities; and

9 (3) Do not adversely impact or impede the use of
10 agricultural land or the availability of surface or
11 groundwater for irrigation use on abutting parcels.

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

14 "(d) Agricultural districts shall include:

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

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



- 1 (3) Aquaculture, which means the production of aquatic
2 plant and animal life within ponds and other bodies of
3 water;
- 4 (4) Wind generated energy production for public, private,
5 and commercial use;
- 6 (5) Biofuel production, as described in section
7 205-4.5(a)(16), for public, private, and commercial
8 use;
- 9 (6) Solar energy facilities; provided that:
 - 10 (A) This paragraph shall apply only to land with soil
11 classified by the land study bureau's detailed
12 land classification as overall (master)
13 productivity rating class B, C, D, or E; and
 - 14 (B) Solar energy facilities placed within land with
15 soil classified as overall productivity rating
16 class B or C shall not occupy more than ten per
17 cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser, unless a
19 special use permit is granted pursuant to section
20 205-6;



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

1 acre of land; provided that these facilities shall not
2 be used as or equipped for use as living quarters or
3 dwellings;

4 (10) Agricultural parks;

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

15 (12) Agricultural tourism activities, including overnight
16 accommodations of twenty-one days or less, for any one
17 stay within a county; provided that this paragraph
18 shall apply only to a county that includes at least
19 three islands and has adopted ordinances regulating
20 agricultural tourism activities pursuant to section
21 205-5; provided further that the agricultural tourism



1 activities coexist with a bona fide agricultural
2 activity. For the purposes of this paragraph, "bona
3 fide agricultural activity" means a farming operation
4 as defined in section 165-2;

5 (13) Open area recreational facilities;

6 (14) Geothermal resources exploration and geothermal
7 resources development, as defined under section 182-1;
8 and

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

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

16 (B) Retail activities in an enclosed structure owned
17 and operated by a producer for the display and
18 sale of agricultural products grown in Hawaii,
19 value-added products that were produced using
20 agricultural products grown in Hawaii, logo items



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

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

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

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



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

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

11 (2) Game and fish propagation;

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

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



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



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



1 buildings may be allowed on land within the
2 subdivision as follows:

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

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

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

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



- 1 (14) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (15) Wind energy facilities, including the appurtenances
13 associated with the production and transmission of
14 wind generated energy; provided that the wind energy
15 facilities and appurtenances are compatible with
16 agriculture uses and cause minimal adverse impact on
17 agricultural land;
- 18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing
2 facilities and appurtenances do not adversely impact
3 agricultural land and other agricultural uses in the
4 vicinity.

5 For the purposes of this paragraph:

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

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

18 (17) Agricultural-energy facilities, including
19 appurtenances necessary for an agricultural-energy
20 enterprise; provided that the primary activity of the
21 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 (18) Construction and operation of wireless communication
8 antennas; provided that, for the purposes of this
9 paragraph, "wireless communication antenna" means
10 communications equipment that is either freestanding
11 or placed upon or attached to an already existing
12 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 (19) Agricultural education programs conducted on a farming
20 operation as defined in section 165-2, for the
21 education and participation of the general public;



1 provided that the agricultural education programs are
2 accessory and secondary to the principal agricultural
3 use of the parcels or lots on which the agricultural
4 education programs are to occur and do not interfere
5 with surrounding farm operations. For the purposes of
6 this section, "agricultural education programs" means
7 activities or events designed to promote knowledge and
8 understanding of agricultural activities and practices
9 conducted on a farming operation as defined in section
10 165-2;

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

20 (A) Located on a paved or unpaved road in existence
21 as of December 31, 2013, and the parcel of land



1 upon which the paved or unpaved road is located
2 has a valid county agriculture tax dedication
3 status or a valid agricultural conservation
4 easement;

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

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

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

14 (A) The area occupied by the solar energy facilities
15 is also made available for compatible
16 agricultural activities at a lease rate that is
17 at least fifty per cent below the fair market
18 rent for comparable properties;

19 (B) Proof of financial security to decommission the
20 facility is provided to the satisfaction of the
21 appropriate county planning commission prior to



1 date of commencement of commercial generation;
2 and

3 (C) Solar energy facilities shall be decommissioned
4 at the owner's expense according to the following
5 requirements:

6 (i) Removal of all equipment related to the
7 solar energy facility within twelve months
8 of the conclusion of operation or useful
9 life; and

10 (ii) Restoration of the disturbed earth to
11 substantially the same physical condition as
12 existed prior to the development of the
13 solar energy facility.

14 For the purposes of this paragraph, "agricultural
15 activities" means the activities described in
16 paragraphs (1) to (3); [e]

17 (22) Geothermal resources exploration and geothermal
18 resources development, as defined under section
19 182-1[-]; or

20 (23) Hydroelectric facilities, including the appurtenances
21 associated with the production and transmission of



1 hydroelectric energy, subject to section 205-2;
 2 provided that the hydroelectric facilities and their
 3 appurtenances:
 4 (A) Comply with instream flow standards established
 5 by the commission on water resource management;
 6 (B) Are accessory to agricultural activities; and
 7 (C) Do not adversely impact or impede the use of
 8 agricultural land or the availability of surface
 9 or groundwater for irrigation use on abutting
 10 parcels."

11 SECTION 4. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval;
 14 provided that the amendments made to section 205-4.5(a), Hawaii
 15 Revised Statutes, by section 3 of this Act shall not be repealed
 16 when that section is reenacted on June 30, 2019, pursuant to
 17 section 3(1) of Act 52, Session laws of Hawaii 2014.

18

INTRODUCED BY *[Signature]*

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H.B. NO. 1273

Report Title:

Agricultural Land; Permissible Use; Hydroelectric Facilities

Description:

Includes hydroelectric facilities as a permissible use on agricultural lands if the hydroelectric facilities are accessory to agricultural activities.

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