



GOV. MSG. NO. 1275

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 30, 2016

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 June 30, 2016, the following bill was signed into law:

HB2077 HD2 SD2 CD1

RELATING TO HYDROELECTRIC POWER
ACT 173 (16)

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO HYDROELECTRIC POWER.

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 further finds that while Hawaii's
9 agricultural land is a fundamentally important and diminishing
10 resource that is pivotal to the State's initiatives in food
11 security, hydroelectric facilities may be located on
12 agricultural lands in a manner that minimizes adverse impacts on
13 agricultural activities and resources.

14 The purpose of this Act is to authorize, in agricultural
15 districts, the construction of small hydropower facilities as
16 defined by the United States Department of Energy.

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



- 1 "(d) Agricultural districts shall include:
- 2 (1) Activities or uses as characterized by the cultivation
- 3 of crops, crops for bioenergy, orchards, forage, and
- 4 forestry;
- 5 (2) Farming activities or uses related to animal husbandry
- 6 and game and fish propagation;
- 7 (3) Aquaculture, which means the production of aquatic
- 8 plant and animal life within ponds and other bodies of
- 9 water;
- 10 (4) Wind generated energy production for public, private,
- 11 and commercial use;
- 12 (5) Biofuel production, as described in section
- 13 205-4.5(a)(16), for public, private, and commercial
- 14 use;
- 15 (6) Solar energy facilities; provided that:
- 16 (A) This paragraph shall apply only to land with soil
- 17 classified by the land study bureau's detailed
- 18 land classification as overall (master)
- 19 productivity rating class B, C, D, or E; and
- 20 (B) Solar energy facilities placed within land with
- 21 soil classified as overall productivity rating



1 class B or C shall not occupy more than ten per
2 cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser, unless a
4 special use permit is granted pursuant to section
5 205-6;

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



1 and plantation community subdivisions as defined in
2 section 205-4.5(a)(12);
3 (8) Wind machines and wind farms;
4 (9) Small-scale meteorological, air quality, noise, and
5 other scientific and environmental data collection and
6 monitoring facilities occupying less than one-half
7 acre of land; provided that these facilities shall not
8 be used as or equipped for use as living quarters or
9 dwellings;
10 (10) Agricultural parks;
11 (11) Agricultural tourism conducted on a working farm, or a
12 farming operation as defined in section 165-2, for the
13 enjoyment, education, or involvement of visitors;
14 provided that the agricultural tourism activity is
15 accessory and secondary to the principal agricultural
16 use and does not interfere with surrounding farm
17 operations; and provided further that this paragraph
18 shall apply only to a county that has adopted
19 ordinances regulating agricultural tourism under
20 section 205-5;



- 1 (12) 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 (13) Open area recreational facilities;
- 13 (14) Geothermal resources exploration and geothermal
14 resources development, as defined under section 182-1;
15 [and]
- 16 (15) Agricultural-based commercial operations, including:
17 (A) A roadside stand that is not an enclosed
18 structure, owned and operated by a producer for
19 the display and sale of agricultural products
20 grown in Hawaii and value-added products that



1 were produced using agricultural products grown
2 in Hawaii;

3 (B) Retail activities in an enclosed structure owned
4 and operated by a producer for the display and
5 sale of agricultural products grown in Hawaii,
6 value-added products that were produced using
7 agricultural products grown in Hawaii, logo items
8 related to the producer's agricultural
9 operations, and other food items; and

10 (C) A retail food establishment owned and operated by
11 a producer and permitted under title 11, chapter
12 12 of the rules of the department of health that
13 prepares and serves food at retail using products
14 grown in Hawaii and value-added products that
15 were produced using agricultural products grown
16 in Hawaii.

17 The owner of an agricultural-based commercial
18 operation shall certify, upon request of an officer or
19 agent charged with enforcement of this chapter under
20 section 205-12, that the agricultural products



1 displayed or sold by the operation meet the
2 requirements of this paragraph[-]; and
3 (16) Hydroelectric facilities as described in section
4 205-4.5(a) (23).

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

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

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

12 "(a) Within the agricultural district, all lands with soil
13 classified by the land study bureau's detailed land
14 classification as overall (master) productivity rating class A
15 or B and for solar energy facilities, class B or C, shall be
16 restricted to the following permitted uses:

- 17 (1) Cultivation of crops, including crops for bioenergy,
18 flowers, vegetables, foliage, fruits, forage, and
19 timber;
- 20 (2) Game and fish propagation;



- 1 (3) Raising of livestock, including poultry, bees, fish,
2 or other animal or aquatic life that are propagated
3 for economic or personal use;
- 4 (4) Farm dwellings, employee housing, farm buildings, or
5 activities or uses related to farming and animal
6 husbandry. "Farm dwelling", as used in this
7 paragraph, means a single-family dwelling located on
8 and used in connection with a farm, including clusters
9 of single-family farm dwellings permitted within
10 agricultural parks developed by the State, or where
11 agricultural activity provides income to the family
12 occupying the dwelling;
- 13 (5) Public institutions and buildings that are necessary
14 for agricultural practices;
- 15 (6) Public and private open area types of recreational
16 uses, including day camps, picnic grounds, parks, and
17 riding stables, but not including dragstrips,
18 airports, drive-in theaters, golf courses, golf
19 driving ranges, country clubs, and overnight camps;
- 20 (7) Public, private, and quasi-public utility lines and
21 roadways, transformer stations, communications



- 1 equipment buildings, solid waste transfer stations,
2 major water storage tanks, and appurtenant small
3 buildings such as booster pumping stations, but not
4 including offices or yards for equipment, material,
5 vehicle storage, repair or maintenance, treatment
6 plants, corporation yards, or other similar
7 structures;
- 8 (8) Retention, restoration, rehabilitation, or improvement
9 of buildings or sites of historic or scenic interest;
- 10 (9) Agricultural-based commercial operations as described
11 in section 205-2(d)(15);
- 12 (10) Buildings and uses, including mills, storage, and
13 processing facilities, maintenance facilities,
14 photovoltaic, biogas, and other small-scale renewable
15 energy systems producing energy solely for use in the
16 agricultural activities of the fee or leasehold owner
17 of the property, and vehicle and equipment storage
18 areas that are normally considered directly accessory
19 to the above-mentioned uses and are permitted under
20 section 205-2(d);
- 21 (11) Agricultural parks;



- 1 (12) Plantation community subdivisions, which as used in
2 this chapter means an established subdivision or
3 cluster of employee housing, community buildings, and
4 agricultural support buildings on land currently or
5 formerly owned, leased, or operated by a sugar or
6 pineapple plantation; provided that the existing
7 structures may be used or rehabilitated for use, and
8 new employee housing and agricultural support
9 buildings may be allowed on land within the
10 subdivision as follows:
- 11 (A) The employee housing is occupied by employees or
12 former employees of the plantation who have a
13 property interest in the land;
- 14 (B) The employee housing units not owned by their
15 occupants shall be rented or leased at affordable
16 rates for agricultural workers; or
- 17 (C) The agricultural support buildings shall be
18 rented or leased to agricultural business
19 operators or agricultural support services;
- 20 (13) Agricultural tourism conducted on a working farm, or a
21 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

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

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

5 (16) Biofuel processing facilities, including the
6 appurtenances associated with the production and
7 refining of biofuels that is normally considered
8 directly accessory and secondary to the growing of the
9 energy feedstock; provided that biofuel processing
10 facilities and appurtenances do not adversely impact
11 agricultural land and other agricultural uses in the
12 vicinity.

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

5 (17) Agricultural-energy facilities, including
6 appurtenances necessary for an agricultural-energy
7 enterprise; provided that the primary activity of the
8 agricultural-energy enterprise is agricultural
9 activity. To be considered the primary activity of an
10 agricultural-energy enterprise, the total acreage
11 devoted to agricultural activity shall be not less
12 than ninety per cent of the total acreage of the
13 agricultural-energy enterprise. The agricultural-
14 energy facility shall be limited to lands owned,
15 leased, licensed, or operated by the entity conducting
16 the agricultural activity.

17 As used in this paragraph:

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

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure
10 of the appropriate type and scale for the economic
11 commercial generation, storage, distribution, and
12 other similar handling of energy, including equipment,
13 feedstock, fuels, and other products of agricultural-
14 energy facilities;

15 (18) Construction and operation of wireless communication
16 antennas; provided that, for the purposes of this
17 paragraph, "wireless communication antenna" means
18 communications equipment that is either freestanding
19 or placed upon or attached to an already existing
20 structure and that transmits and receives
21 electromagnetic radio signals used in the provision of



1 all types of wireless communications services;
2 provided further that nothing in this paragraph shall
3 be construed to permit the construction of any new
4 structure that is not deemed a permitted use under
5 this subsection;

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

19 (20) Solar energy facilities that do not occupy more than
20 ten per cent of the acreage of the parcel, or twenty
21 acres of land, whichever is lesser or for which a



1 special use permit is granted pursuant to section 205-
2 6; provided that this use shall not be permitted on
3 lands with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class A unless the solar energy
6 facilities are:

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

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

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

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:



- 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 or
- 7 (23) Hydroelectric facilities, including the appurtenances
8 associated with the production and transmission of
9 hydroelectric energy, subject to section 205-2;
10 provided that the hydroelectric facilities and their
11 appurtenances:
- 12 (A) [~~Have a hydroelectric generating capacity of not~~
13 ~~more than five hundred kilowatts,]~~ Shall consist
14 of a small hydropower facility as defined by the
15 United States Department of Energy, including:
- 16 (i) Impoundment facilities using a dam to store
17 water in a reservoir;
- 18 (ii) A diversion or run-of-river facility that
19 channels a portion of a river through a
20 canal or channel; and



1 (iii) Pumped storage facilities that store energy
2 by pumping water uphill to a reservoir at
3 higher elevation from a reservoir at a lower
4 elevation to be released to turn a turbine
5 to generate electricity;

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

7 (C) ~~[Are accessory to agricultural activities on~~
8 ~~agricultural land for agricultural use only; and]~~
9 Shall, if over five hundred kilowatts in
10 hydroelectric generating capacity, have the
11 approval of the commission on water resource
12 management, including a new instream flow
13 standard established for any new hydroelectric
14 facility; and

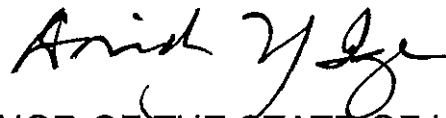
15 (D) Do not [~~adversely~~] impact or impede the use of
16 agricultural land or the availability of surface
17 or ground water for all uses on all parcels that
18 are served by the ground water sources or streams
19 for which hydroelectric facilities are
20 considered. "



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2016;
4 provided that the amendments made to section 205-4.5(a)(23),
5 Hawaii Revised Statutes, by section 3 of this Act shall not be
6 repealed when section 205-4.5, Hawaii Revised Statutes, is
7 reenacted on June 30, 2019, pursuant to section 3 of Act 52,
8 Session Laws of Hawaii 2014.

9 APPROVED this 30 day of JUN, 2016



GOVERNOR OF THE STATE OF HAWAII

