

JAN 17 2020

A BILL FOR AN ACT

RELATING TO WIND ENERGY FACILITIES.

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

1 SECTION 1. 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~~



1 ~~paragraph, means a single family dwelling located on~~
2 ~~and used in connection with a farm, including clusters~~
3 ~~of single family farm dwellings permitted within~~
4 ~~agricultural parks developed by the State, or where~~
5 ~~agricultural activity provides income to the family~~
6 ~~occupying the dwelling];~~

7 (5) Public institutions and buildings that are necessary
8 for agricultural practices;

9 (6) Public and private open area types of recreational
10 uses, including day camps, picnic grounds, parks, and
11 riding stables, but not including dragstrips,
12 airports, drive-in theaters, golf courses, golf
13 driving ranges, country clubs, and overnight camps;

14 (7) Public, private, and quasi-public utility lines and
15 roadways, transformer stations, communications
16 equipment buildings, solid waste transfer stations,
17 major water storage tanks, and appurtenant small
18 buildings such as booster pumping stations, but not
19 including offices or yards for equipment, material,
20 vehicle storage, repair or maintenance, treatment



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



1 pineapple plantation; provided that the existing
2 structures may be used or rehabilitated for use, and
3 new employee housing and agricultural support
4 buildings may be allowed on land within the
5 subdivision as follows:

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

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

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

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



1 shall apply only to a county that has adopted
2 ordinances regulating agricultural tourism under
3 section 205-5;

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

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



1 and that has the capacity to generate one megawatt or
2 more shall be located not less than one mile from the
3 nearest farm dwelling or off-site residential dwelling
4 unit in existence at the time of the application for
5 necessary permits, measured from the center of the
6 nearest wind turbine generator to the nearest exterior
7 of the farm dwelling or residential dwelling unit;

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

16 For the purposes of this paragraph:

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



1 "Biofuel processing facility" means a facility
2 that produces liquid or gaseous fuels from organic
3 sources such as biomass crops, agricultural residues,
4 and oil crops, including palm, canola, soybean, and
5 waste cooking oils; grease; food wastes; and animal
6 residues and wastes that can be used to generate
7 energy;

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

20 As used in this paragraph:



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

3 "Agricultural-energy enterprise" means an
4 enterprise that integrally incorporates an
5 agricultural activity with an agricultural-energy
6 facility.

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

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

19 (18) Construction and operation of wireless communication
20 antennas, including small wireless facilities;
21 provided that, for the purposes of this paragraph,



1 "wireless communication antenna" means communications
2 equipment that is either freestanding or placed upon
3 or attached to an already existing structure and that
4 transmits and receives electromagnetic radio signals
5 used in the provision of all types of wireless
6 communications services; provided further that "small
7 wireless facilities" shall have the same meaning as in
8 section 206N-2; provided further that nothing in this
9 paragraph shall be construed to permit the
10 construction of any new structure that is not deemed a
11 permitted use under this subsection;

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



1 knowledge and understanding of agricultural activities
2 and practices conducted on a farming operation as
3 defined in section 165-2;

4 (20) Solar energy facilities that do not occupy more than
5 ten per cent of the acreage of the parcel, or twenty
6 acres of land, whichever is lesser or for which a
7 special use permit is granted pursuant to section
8 205-6; provided that this use shall not be permitted
9 on lands with soil classified by the land study
10 bureau's detailed land classification as overall
11 (master) productivity rating class A;

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

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



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

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

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

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

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



1 (22) Geothermal resources exploration and geothermal
2 resources development, as defined under section 182-1;
3 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) Shall consist of a small hydropower facility as
10 defined by the United States Department of
11 Energy, including:

12 (i) Impoundment facilities using a dam to store
13 water in a reservoir;

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

17 (iii) Pumped storage facilities that store energy
18 by pumping water uphill to a reservoir at
19 higher elevation from a reservoir at a lower
20 elevation to be released to turn a turbine
21 to generate electricity;



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

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

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

13 For the purposes of this subsection, "farm dwelling" means
14 a single-family dwelling located on and used in connection with
15 a farm, including clusters of single-family farm dwellings
16 permitted within agricultural parks developed by the State, or
17 where agricultural activity provides income to the family
18 occupying the dwelling."

19 SECTION 2. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

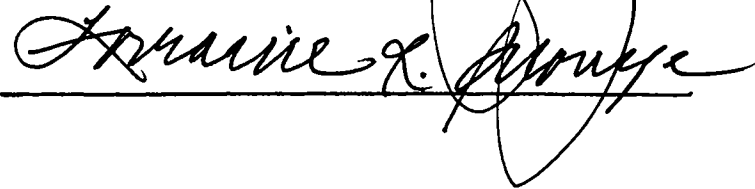


1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2020.

4

INTRODUCED BY: _____





S.B. NO. 2558

Report Title:

Wind Energy Facilities; Wind Turbines; Setback

Description:

Establishes a one-mile setback from the nearest existing farm dwelling or residential dwelling unit for wind energy facilities in agricultural districts.

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