

JAN 22 2010

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# 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) 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 shall be restricted to the following permitted uses:

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

10 (2) Game and fish propagation;

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

14 (4) Farm dwellings, employee housing, farm buildings, or  
15 activities or uses related to farming and animal  
16 husbandry. "Farm dwelling", as used in this  
17 paragraph, means a single-family dwelling located on  
18 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;

21 (8) Retention, restoration, rehabilitation, or improvement  
22 of buildings or sites of historic or scenic interest;



- 1           (9)   Roadside stands for the sale of agricultural products  
2                   grown on the premises;
- 3           (10)   Buildings and uses, including mills, storage, and  
4                   processing facilities, maintenance facilities, and  
5                   vehicle and equipment storage areas that are normally  
6                   considered directly accessory to the above-mentioned  
7                   uses and are permitted under section 205-2(d);
- 8           (11)   Agricultural parks;
- 9           (12)   Plantation community subdivisions, which as used in  
10                   this chapter means an established subdivision or  
11                   cluster of employee housing, community buildings, and  
12                   agricultural support buildings on land currently or  
13                   formerly owned, leased, or operated by a sugar or  
14                   pineapple plantation; provided that the existing  
15                   structures may be used or rehabilitated for use, and  
16                   new employee housing and agricultural support  
17                   buildings may be allowed on land within the  
18                   subdivision as follows:
  - 19                   (A)   The employee housing is occupied by employees or  
20                           former employees of the plantation who have a  
21                           property interest in the land;



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 a  
8 farming operation as defined in section 165-2, for the  
9 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;

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



1 facility utilizing wind turbine generators with the  
2 capacity to generate 1 megawatt or more shall be  
3 located no less than one thousand feet from the  
4 nearest off-site residential dwelling unit in  
5 existence at the time of the application for necessary  
6 permits, measured from the center of the wind turbine  
7 generator to the exterior of the residential dwelling  
8 unit;

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

17 For the purposes of this paragraph:

18 "Appurtenances" means operational infrastructure  
19 of the appropriate type and scale for economic  
20 commercial storage and distribution, and other similar  
21 handling of feedstock, fuels, and other products of  
22 biofuels 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 (16) 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:

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



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

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

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

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



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

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

20 SECTION 2. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

Myra Hill

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**Report Title:**

Wind Energy Facilities; Setback

**Description:**

Provides for a setback when wind energy facilities are being used in agricultural districts.

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

