

JAN 21 2011

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# 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 renewable energy in Hawaii is crucial to the energy security and  
3 energy independence of the State. Increased energy efficiency  
4 and use of renewable energy resources will achieve broad  
5 societal benefits, including resistance to increases in oil  
6 prices, environmental sustainability, economic development, and  
7 job creation.

8           The legislature also finds that Hawaii's dependence on  
9 petroleum makes the State extremely vulnerable to supply  
10 disruption, international market dysfunction, and many other  
11 factors beyond the control of the State. Continued consumption  
12 of conventional petroleum fuel and price volatility can  
13 negatively impact the viability of agricultural operations.

14           The legislature further finds that allowing renewable  
15 energy facilities within the agricultural district furthers and  
16 is consistent with the purposes, standards, and criteria for  
17 uses within agricultural lands. Renewable energy facilities



1 increase both the State's energy self sufficiency and  
2 agricultural sustainability.

3 The purpose of this Act is to authorize renewable energy  
4 production as a permitted use on agricultural lands, whether or  
5 not agricultural activity is the primary activity of the  
6 renewable energy enterprise.

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

9 "(d) Agricultural districts shall include:

10 (1) Activities or uses as characterized by the cultivation  
11 of crops, crops for bioenergy, orchards, forage, and  
12 forestry;

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

15 (3) Aquaculture, which means the production of aquatic  
16 plant and animal life within ponds and other bodies of  
17 water;

18 (4) Wind generated energy production for public, private,  
19 and commercial use;

20 (5) Biofuel production, as described in section 205-  
21 4.5(a)(15), for public, private, and commercial use;



- 1           (6)   Solar energy facilities; [~~provided that this paragraph~~  
2                   ~~shall apply only to land with soil classified by the~~  
3                   ~~land study bureau's detailed land classification as~~  
4                   ~~overall (master) productivity rating class D or E;~~]
- 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, agricultural-energy facilities as defined  
14                  in section 205-4.5(a)(16), vehicle and equipment  
15                  storage areas, roadside stands for the sale of  
16                  products grown on the premises, and plantation  
17                  community subdivisions as defined in section 205-  
18                  4.5(a)(12);
- 19           (8)   Wind machines and wind farms;
- 20           (9)   Small-scale meteorological, air quality, noise, and  
21                  other scientific and environmental data collection and  
22                  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; and

15 (12) Open area recreational facilities.

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."  
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SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within 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;
- 21 (9) Roadside stands for the sale of agricultural products  
22 grown on the premises;



- 1       (10) Buildings and uses, including mills, storage, and
- 2             processing facilities, maintenance facilities, and
- 3             vehicle and equipment storage areas that are normally
- 4             considered directly accessory to the above-mentioned
- 5             uses and are permitted under section 205-2(d);
- 6       (11) Agricultural parks;
- 7       (12) Plantation community subdivisions, which as used in
- 8             this chapter means an established subdivision or
- 9             cluster of employee housing, community buildings, and
- 10            agricultural support buildings on land currently or
- 11            formerly owned, leased, or operated by a sugar or
- 12            pineapple plantation; provided that the existing
- 13            structures may be used or rehabilitated for use, and
- 14            new employee housing and agricultural support
- 15            buildings may be allowed on land within the
- 16            subdivision as follows:
- 17            (A) The employee housing is occupied by employees or
- 18               former employees of the plantation who have a
- 19               property interest in the land;
- 20            (B) The employee housing units not owned by their
- 21               occupants shall be rented or leased at affordable
- 22               rates for agricultural workers; or

- 1 (C) The agricultural support buildings shall be  
2 rented or leased to agricultural business  
3 operators or agricultural support services;
- 4 (13) Agricultural tourism conducted on a working farm, or a  
5 farming operation as defined in section 165-2, for the  
6 enjoyment, education, or involvement of visitors;  
7 provided that the agricultural tourism activity is  
8 accessory and secondary to the principal agricultural  
9 use and does not interfere with surrounding farm  
10 operations; and provided further that this paragraph  
11 shall apply only to a county that has adopted  
12 ordinances regulating agricultural tourism under  
13 section 205-5;
- 14 (14) 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 (15) Biofuel processing facilities, including the  
21 appurtenances associated with the production and  
22 refining of biofuels that is normally considered





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

6 For the purposes of this paragraph:

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

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

19 (16) Agricultural-energy facilities, including  
20 appurtenances necessary for an agricultural-energy  
21 ~~[enterprise; provided that the primary activity of the~~  
22 ~~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.] facility.~~

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~~  
21           ~~activities from agricultural lands located in the~~  
22           ~~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 (17) 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; or

19 (18) 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;  
22 provided that the agricultural education programs are



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

10 2. By amending subsection (c) to read:

11 "(c) Within the agricultural district, all lands with soil  
 12 classified by the land study bureau's detailed land  
 13 classification as overall (master) productivity rating class C,  
 14 D, E, or U shall be restricted to the uses permitted for  
 15 agricultural districts as set forth in subsection (a)(16) and  
 16 section 205-5(b)."

17 SECTION 4. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

20 *Gilliam-Kepeler*  
*Nehille Sidani* INTRODUCED BY: *Malcolm John*  
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S.B. NO. 631

*Jose Merando*



**Report Title:**

Renewable Energy; Agricultural Land

**Description:**

Authorizes renewable energy production as a permitted use on agricultural lands, regardless of whether or not agricultural activity is the primary activity of the renewable energy enterprise.

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

