

SB 2289

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON ENERGY AND ENVIRONMENT, AND
AGRICULTURE

Tuesday, February 14, 2011
Room 225
2:45 P.M.

SENATE BILL NO. 2289
RELATING TO LAND USE

Chairpersons Gabbard and Nishihara and Members of the Committees:

Thank you for this opportunity to provide testimony on Senate Bill No. 2289 that amends Section 205-2(d) to allow hydroelectric facilities as a permissible use in the Agricultural District, and amends Section 205-4.5(a) to allow hydroelectric facilities including the appurtenances associated with the production and transmission of hydroelectric energy as permissible uses on "A" and "B" Agricultural District lands.

The Department of Agriculture supports efforts to diversify sources of renewable energy, provided that there is a benefit to agriculture in addition to a requirement that such facilities do not adversely impact or impede the use of agricultural land or the availability of surface or groundwater for irrigation use. The Department respectfully offers a proposed Senate Draft 1 that we believe advances the State's food and energy security initiatives.

The proposed SD1 clarifies that hydroelectric energy-generating facilities are permissible but should still be accessory to the primary agricultural activity conducted on the lands.



Thank you for this opportunity to testify on this measure.

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

ADDED AND DELETED TEXT IS IN BOLD RAMSEYER

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 increases in oil
6 prices, environmental sustainability, economic development, and
7 job 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 may
13 not be constructed on agricultural lands.

14 The legislature also finds that the agricultural lands in
15 the state are a fundamentally important and diminishing resource
16 that is pivotal to the State's initiatives in food security.

17 Therefore, the location, construction, and operation of

S.B. NO. 2289 SD1 (PROPOSED)

1 renewable energy facilities must be considered in a manner that
2 is beneficial to both food and energy security.

3 The purpose of this Act is to allow hydroelectric energy-
4 generating facilities to be constructed on agricultural lands,
5 provided these facilities are accessory to agricultural
6 activities conducted on the same parcel or abutting parcels that
7 the hydroelectric energy-generating facilities are situated.

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

10 "(d) Agricultural districts shall include:

- 11 (1) Activities or uses as characterized by the cultivation
12 of crops, crops for bioenergy, orchards, forage, and
13 forestry;
- 14 (2) Farming activities or uses related to animal husbandry
15 and game and fish propagation;
- 16 (3) Aquaculture, which means the production of aquatic
17 plant and animal life within ponds and other bodies of
18 water;
- 19 (4) Wind generated energy production for public, private,
20 and commercial use;

S.B. NO. 2289 SD1 (PROPOSED)

- 1 (5) Biofuel production, as described in section
2 205-4.5(a)(15), for public, private, and commercial
3 use;
- 4 (6) Solar energy facilities; provided that:
- 5 (A) This paragraph shall apply only to land with soil
6 classified by the land study bureau's detailed
7 land classification as overall (master)
8 productivity rating class B, C, D, or E; and
- 9 (B) Solar energy facilities placed within land with
10 soil classified as overall productivity rating
11 class B or C shall not occupy more than ten per
12 cent of the acreage of the parcel, or twenty
13 acres of land, whichever is lesser;
- 14 (7) Bona fide agricultural services and uses that support
15 the agricultural activities of the fee or leasehold
16 owner of the property and accessory to any of the
17 above activities, regardless of whether conducted on
18 the same premises as the agricultural activities to
19 which they are accessory, including farm dwellings as
20 defined in section 205-4.5(a)(4), employee housing,
21 farm buildings, mills, storage facilities, processing
22 facilities, agricultural-energy facilities as defined

S.B. NO. 2289 SD1 (PROPOSED)

1 in section 205-4.5(a)(16), hydroelectric facilities as
2 defined in section 205-4.5(a)(20), vehicle and
3 equipment storage areas, roadside stands for the sale
4 of products grown on the premises, and plantation
5 community subdivisions as defined in section
6 205-4.5(a)(12);

7 (8) Wind machines and wind farms;

8 (9) Small-scale meteorological, air quality, noise, and
9 other scientific and environmental data collection and
10 monitoring facilities occupying less than one-half
11 acre of land; provided that these facilities shall not
12 be used as or equipped for use as living quarters or
13 dwellings;

14 (10) Agricultural parks;

15 (11) 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
22 shall apply only to a county that has adopted

S.B. NO. 2289 SD1 (PROPOSED)

1 ordinances regulating agricultural tourism under
2 section 205-5; [and] and

3 (12) Open area recreational facilities[-]. [~~and~~

4 ~~(13) Hydroelectric facilities].~~

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 shall be restricted to the following permitted uses:

16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;

19 (2) Game and fish propagation;

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

S.B. NO. 2289 SD1 (PROPOSED)

- 1 (4) Farm dwellings, employee housing, farm buildings, or
2 activities or uses related to farming and animal
3 husbandry. "Farm dwelling", as used in this
4 paragraph, means a single-family dwelling located on
5 and used in connection with a farm, including clusters
6 of single-family farm dwellings permitted within
7 agricultural parks developed by the State, or where
8 agricultural activity provides income to the family
9 occupying the dwelling;
- 10 (5) Public institutions and buildings that are necessary
11 for agricultural practices;
- 12 (6) Public and private open area types of recreational
13 uses, including day camps, picnic grounds, parks, and
14 riding stables, but not including dragstrips,
15 airports, drive-in theaters, golf courses, golf
16 driving ranges, country clubs, and overnight camps;
- 17 (7) Public, private, and quasi-public utility lines and
18 roadways, transformer stations, communications
19 equipment buildings, solid waste transfer stations,
20 major water storage tanks, and appurtenant small
21 buildings such as booster pumping stations, but not
22 including offices or yards for equipment, material,

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1 vehicle storage, repair or maintenance, treatment
2 plants, corporation yards, or other similar
3 structures;

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

6 (9) Roadside stands for the sale of agricultural products
7 grown on the premises;

8 (10) Buildings and uses, including mills, storage, and
9 processing facilities, maintenance facilities, and
10 vehicle and equipment storage areas that are normally
11 considered directly accessory to the above-mentioned
12 uses and are permitted under section 205-2(d);

13 (11) Agricultural parks;

14 (12) Plantation community subdivisions, which as used in
15 this chapter means an established subdivision or
16 cluster of employee housing, community buildings, and
17 agricultural support buildings on land currently or
18 formerly owned, leased, or operated by a sugar or
19 pineapple plantation; provided that the existing
20 structures may be used or rehabilitated for use, and
21 new employee housing and agricultural support

S.B. NO. 2289 SD1 (PROPOSED)

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 rented
10 or leased to agricultural business operators or
11 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;

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1 (14) Wind energy facilities, including the appurtenances
2 associated with the production and transmission of
3 wind generated energy; provided that the wind energy
4 facilities and appurtenances are compatible with
5 agriculture uses and cause minimal adverse impact on
6 agricultural land;

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

15 For the purposes of this paragraph:

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

21 "Biofuel processing facility" means a facility
22 that produces liquid or gaseous fuels from organic

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

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

18 As used in this paragraph:

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

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

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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 (17) 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
22 all types of wireless communications services;

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

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

18 (19) Solar energy facilities that do not occupy more than
19 ten per cent of the acreage of the parcel, or twenty
20 acres of land, whichever is lesser; provided that this
21 use shall not be permitted on lands with soil
22 classified by the land study bureau's detailed land

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1 classification as overall (master) productivity rating
2 class A[-]; or

3 (20) Hydroelectric facilities, including the appurtenances
4 associated with the production and transmission of
5 hydroelectric energy; provided that:

6 (A) Hydroelectric facilities and their appurtenances
7 meet and comply with instream flow standards
8 established by the commission on water resource
9 management; and

10 ~~(B) Hydroelectric facilities and their appurtenances~~
11 ~~are not adverse to agricultural uses; and]~~

12 (C) (B) Construction, operation, and maintenance of a
13 hydroelectric facility and its appurtenances,
14 provided the facility is accessory to
15 agricultural activities and do not adversely
16 impact or impede the use of agricultural land or
17 the availability of surface or groundwater for
18 irrigation use on abutting parcels. [minimize
19 adverse impacts to agricultural land and
20 interference with the activities of agricultural
21 users]."



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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RICHARD C. LIM
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Statement of
RICHARD C. LIM
Director

REVISED 2/9/12

Department of Business, Economic Development, and Tourism
before the

**SENATE COMMITTEES ON
ENERGY AND ENVIRONMENT**

and

AGRICULTURE

Tuesday, February 14, 2012

2:45 PM

State Capitol, Conference Room 225

in consideration of

SB 2289

RELATING TO RENEWABLE ENERGY.

Chairs Gabbard and Nishihara, Vice Chairs English and Kahele, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB 2289 which eases the regulatory burden for large-scale hydropower development as well as agricultural operations considering smaller-scale hydropower for their own use by amending H.R.S. §205 to allow hydroelectric facilities in State Agricultural Districts. Early coordination among the Department of Agriculture, State Office of Planning, Department of Land and Natural Resources, and DBEDT's Energy Office has resulted in a proposed amendment that would only allow hydroelectric facilities that do not adversely impact agricultural land uses and are in compliance with instream flow standards established by the Commission on Water Resource Management.

DBEDT estimates there are thirty (30) existing and proposed sites statewide suitable for hydroelectric power generation within State Agricultural Districts. SB 2289 would facilitate proper development of these sites by removing the need for a Special (Use) Permit while minimizing impacts to other water users. All other federal, state, and county permits and approvals would still apply.

SB 2289 will add hydroelectric energy facilities to the list of renewable energy facilities currently allowed in State Agricultural Districts under H.R.S. §205: wind energy facilities, bioenergy processing facilities, agricultural-energy facilities, and solar energy facilities (which are limited by soil rating.)

Thank you for the opportunity to provide testimony in support of SB 2289.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
ENERGY AND ENVIRONMENT
and
AGRICULTURE**

**Tuesday, February 14, 2012
2:45 PM
State Capitol, Conference Room 225**

**In Consideration of
SENATE BILL 2289
RELATING TO RENEWABLE ENERGY**

Senate Bill 2289 amends Section 205 Hawaii Revised Statutes to allow hydroelectric facilities to be constructed on agricultural lands. The testimony of the Department of Land and Natural Resources (Department) and Commission on Water Resource Management (Commission) is limited to SECTION 3 of this measure. The Department appreciates the intent of Senate Bill 2289, but defers to the State Department of Business, Economic Development, and Tourism regarding the administration of agricultural districts and permitted activities therein.

The purpose of SECTION 3 is to include hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, as a permitted use within agricultural districts, provided that, among other things, the facility and appurtenances meet and comply with instream flow standards established by the Commission. The Commission appreciates the recognition that hydroelectric facilities and their appurtenances have the potential to impact instream flow standards. Instream flow standards serve to ensure adequate levels of stream flow are available to protect public trust purposes, such as environmental uses and traditional and customary Hawaiian rights.

The Commission acknowledges the State's clean energy goals and importance of energy self-sufficiency. The State Water Code (Chapter 174C, Hawaii Revised Statutes) provides a process for modification of established instream flow standards to weigh the importance of the present instream values with the importance of the potential uses of water for noninstream purposes, including the economic impact of restricting such uses.

Thank you for the opportunity to comment.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony before the
Senate Committees on
Energy and Environment
And
Agriculture**

S.B. 2289 – Relating to Renewable Energy

**Tuesday, February 14, 2012
2:45 pm, Conference Room 225**

**By Arthur Seki
Director of Renewable Technology
Hawaiian Electric Company, Inc.**

Chairs Gabbard and Nishihara, Vice Chairs English and Kahele and members of the Committees:

My name is Arthur Seki—I am the Director of Renewable Technology at Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company and its subsidiaries, Maui Electric Company and Hawaii Electric Light Company) hereinafter collectively referred to as the Hawaiian Electric Companies.

The Hawaiian Electric Companies strongly support S.B. 2289, which allows hydroelectric energy-generating facilities on agricultural lands. We would suggest that the agricultural lands be also open to pumped storage hydroelectric (PSH) facilities as well. The PSH facility is an energy storage technology option that could also supplement water supply to agricultural land users.

Thank you for the opportunity to present this testimony.