
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The land study bureau of the University of
2 Hawaii prepared an inventory and evaluation of the State's land
3 resources during the 1960's and 1970's. The Bureau used the
4 interaction of particular soil properties, topography, and
5 climate to establish a five-class productivity rating system.
6 The overall (master) productivity rating evaluates land in its
7 general productive capacity and not for any specific crop.

8 The office of planning recently identified and corrected
9 errors in the GIS layer when compared to the original hardcopy
10 maps. However, the continued use of these outdated productivity
11 ratings as the measure of agricultural zoning restricts modern
12 agricultural productivity.

13 The purpose of this Act is to require the office of
14 planning to establish a detailed land classification of overall
15 (master) productivity ratings every twenty years, beginning in
16 2014.

17 SECTION 2. Section 166E-3, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:



1 "(b) The department shall administer a program to manage
2 the transferred non-agricultural park lands under rules adopted
3 by the board pursuant to chapter 91. The program and its rules
4 shall be separate and distinct from the agricultural park
5 program and its rules. Non-agricultural park lands are not the
6 same as, and shall not be selected or managed as are lands under
7 agricultural park leases. Notwithstanding any other law to the
8 contrary, the program shall include the following conditions
9 pertaining to encumbered non-agricultural park lands:

- 10 (1) The lessee or permittee shall perform in full
11 compliance with the existing lease or permit;
- 12 (2) The lessee or permittee shall not be in arrears in the
13 payment of taxes, rents, or other obligations owed to
14 the State or any county;
- 15 (3) The lessee's or permittee's agricultural operation
16 shall be economically viable as specified by the
17 board; and
- 18 (4) No encumbered or unencumbered non-agricultural park
19 lands with soils classified by the [~~land study~~
20 ~~bureau's~~] office of planning's detailed land
21 classification as overall (master) productivity rating
22 class A or B shall be transferred for the use or



1 development of golf courses, golf driving ranges, and
2 country clubs.

3 The transfer of non-agricultural park lands shall be done in a
4 manner to be determined by the board of agriculture."

5 SECTION 3. Section 201N-14, Hawaii Revised Statutes, is
6 amended by amending subsection (d) to read as follows:

7 "(d) The exemption from subdivision requirements
8 authorized by this section shall only apply to leases and
9 easements that meet the following requirements and shall be
10 subject to the following limitations:

11 (1) The lease or easement shall restrict the use of the
12 leased land or easement area to the development and
13 operation of a renewable energy project; provided
14 that, to comply with section 205-4.6, agricultural
15 uses and activities shall not be restricted on
16 agricultural land;

17 (2) The lease shall have an initial term of at least
18 twenty years;

19 (3) With respect to leases and easements on lands within
20 an agricultural state land use district, the exemption
21 from subdivision requirements provided by this section
22 shall be for:



- 1 (A) Solar energy facilities permitted under section
2 205-2(d)(6), on land with soil classified by the
3 [~~land study bureau's~~] office of planning's
4 detailed land classification as overall (master)
5 productivity rating class D or E;
- 6 (B) Wind energy facilities permitted under section
7 205-2(d)(4) and (8), including the appurtenances
8 associated with the production and transmission
9 of wind-generated energy; and
- 10 (C) Any renewable energy facilities approved by the
11 land use commission or county planning commission
12 under chapter 205;
- 13 (4) With respect to leases and easements on lands within a
14 conservation state land use district, the exemption
15 from subdivision requirements provided by this section
16 shall be for:
- 17 (A) Wind energy facilities, including the
18 appurtenances associated with the production and
19 transmission of wind-generated energy; and
- 20 (B) Any renewable energy facilities permitted or
21 approved by the board of land and natural
22 resources under chapter 183C; and



1 (5) The county agency charged with administering
2 subdivisions in the county in which the renewable
3 energy project is to be situated or, if the land is in
4 a conservation state land use district, the department
5 of land and natural resources, shall approve the
6 exemption from subdivision requirements within ninety
7 days after the project's developer and the owner of
8 the land on which the renewable energy project is to
9 be situated have submitted the conceptual schematics
10 or preliminary plans and specifications for the
11 renewable energy project to the county agency or the
12 department of land and natural resources, and have
13 provided to such county agency or the department of
14 land and natural resources, as applicable, a
15 certification and agreement that all applicable and
16 appropriate environmental reviews and permitting shall
17 be completed prior to commencement of development of
18 the renewable energy project. If, on the ninety-first
19 day, an exemption has not been approved, it shall be
20 deemed disapproved by the county agency or the
21 department of land and natural resources, whichever is
22 applicable."



1 SECTION 4. Section 205-2, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, crops for bioenergy, orchards, forage, and
6 forestry;

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

9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;

12 (4) Wind generated energy production for public, private,
13 and commercial use;

14 (5) Biofuel production, as described in section
15 205-4.5(a)(16), for public, private, and commercial
16 use;

17 (6) Solar energy facilities; provided that:

18 (A) This paragraph shall apply only to land with soil
19 classified by the [~~land study bureau's~~] office of
20 planning's detailed land classification as
21 overall (master) productivity rating class B, C,
22 D, or E; and



- 1 (B) Solar energy facilities placed within land with
- 2 soil classified as overall productivity rating
- 3 class B or C shall not occupy more than ten per
- 4 cent of the acreage of the parcel, or twenty
- 5 acres of land, whichever is lesser;

- 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 vehicle and equipment storage areas, and plantation
- 20 community subdivisions as defined in section
- 21 205-4.5(a)(12);

- 22 (8) Wind machines and wind farms;



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



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

7 (13) Open area recreational facilities;

8 [†] (14) [†] Geothermal resources exploration and geothermal
9 resources development, as defined under section 182-1;
10 and

11 [†] (15) [†] Agricultural-based commercial operations, including:

12 (A) A roadside stand that is not an enclosed
13 structure, owned and operated by a producer for
14 the display and sale of agricultural products
15 grown in Hawaii and value-added products that
16 were produced using agricultural products grown
17 in Hawaii;

18 (B) Retail activities in an enclosed structure owned
19 and operated by a producer for the display and
20 sale of agricultural products grown in Hawaii,
21 value-added products that were produced using
22 agricultural products grown in Hawaii, logo items



1 related to the producer's agricultural
2 operations, and other food items; and
3 (C) A retail food establishment owned and operated by
4 a producer and permitted under [title 11,]
5 chapter 12 of the rules of the department of
6 health that prepares and serves food at retail
7 using products grown in Hawaii and value-added
8 products that were produced using agricultural
9 products grown in Hawaii.

10 The owner of an agricultural-based commercial
11 operation shall certify, upon request of an officer or
12 agent charged with enforcement of this chapter under
13 section 205-12, that the agricultural products
14 displayed or sold by the operation meet the
15 requirements of this paragraph.

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."

21 SECTION 5. Section 205-4.5, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) Within the agricultural district, all lands with soil
2 classified by the [~~land study bureau's~~] office of planning's
3 detailed land classification as overall (master) productivity
4 rating class A or B shall be restricted to the following
5 permitted uses:

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

9 (2) Game and fish propagation;

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

13 (4) Farm dwellings, employee housing, farm buildings, or
14 activities or uses related to farming and animal
15 husbandry. "Farm dwelling", as used in this
16 paragraph, means a single-family dwelling located on
17 and used in connection with a farm, including clusters
18 of single-family farm dwellings permitted within
19 agricultural parks developed by the State, or where
20 agricultural activity provides income to the family
21 occupying the dwelling;



- 1 (5) Public institutions and buildings that are necessary
2 for agricultural practices;
- 3 (6) Public and private open area types of recreational
4 uses, including day camps, picnic grounds, parks, and
5 riding stables, but not including dragstrips,
6 airports, drive-in theaters, golf courses, golf
7 driving ranges, country clubs, and overnight camps;
- 8 (7) Public, private, and quasi-public utility lines and
9 roadways, transformer stations, communications
10 equipment buildings, solid waste transfer stations,
11 major water storage tanks, and appurtenant small
12 buildings such as booster pumping stations, but not
13 including offices or yards for equipment, material,
14 vehicle storage, repair or maintenance, treatment
15 plants, corporation yards, or other similar
16 structures;
- 17 (8) Retention, restoration, rehabilitation, or improvement
18 of buildings or sites of historic or scenic interest;
- 19 (9) Agricultural-based commercial operations as described
20 in section [†]205-2(d)(15)[†];
- 21 (10) Buildings and uses, including mills, storage, and
22 processing facilities, maintenance facilities,



1 photovoltaic, biogas, and other small-scale renewable
2 energy systems producing energy solely for use in the
3 agricultural activities of the fee or leasehold owner
4 of the property, and vehicle and equipment storage
5 areas that are normally considered directly accessory
6 to the above-mentioned uses and are permitted under
7 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) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 three islands and has adopted ordinances regulating
22 agricultural tourism activities pursuant to section



1 205-5; provided further that the agricultural tourism
2 activities coexist with a bona fide agricultural
3 activity. For the purposes of this paragraph, "bona
4 fide agricultural activity" means a farming operation
5 as defined in section 165-2;

6 (15) Wind energy facilities, including the appurtenances
7 associated with the production and transmission of
8 wind generated energy; provided that the wind energy
9 facilities and appurtenances are compatible with
10 agriculture uses and cause minimal adverse impact on
11 agricultural land;

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

20 For the purposes of this paragraph:

21 "Appurtenances" means operational infrastructure
22 of the appropriate type and scale for economic



1 commercial storage and distribution, and other similar
2 handling of feedstock, fuels, and other products of
3 biofuel processing facilities.

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

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



1 As used in this paragraph:

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

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

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

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

20 (18) Construction and operation of wireless communication
21 antennas; provided that, for the purposes of this
22 paragraph, "wireless communication antenna" means



1 communications equipment that is either freestanding
2 or placed upon or attached to an already existing
3 structure and that transmits and receives
4 electromagnetic radio signals used in the provision of
5 all types of wireless communications services;
6 provided further that nothing in this paragraph shall
7 be construed to permit the construction of any new
8 structure that is not deemed a permitted use under
9 this subsection;

10 (19) Agricultural education programs conducted on a farming
11 operation as defined in section 165-2, for the
12 education and participation of the general public;
13 provided that the agricultural education programs are
14 accessory and secondary to the principal agricultural
15 use of the parcels or lots on which the agricultural
16 education programs are to occur and do not interfere
17 with surrounding farm operations. For the purposes of
18 this section, "agricultural education programs" means
19 activities or events designed to promote knowledge and
20 understanding of agricultural activities and practices
21 conducted on a farming operation as defined in section
22 165-2;



1 (20) Solar energy facilities that do not occupy more than
2 ten per cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser; provided that this
4 use shall not be permitted on lands with soil
5 classified by the land study bureau's detailed land
6 classification as overall (master) productivity rating
7 class A; or
8 [+] (21) [+] Geothermal resources exploration and geothermal
9 resources development, as defined under section
10 182-1."

11 SECTION 6. Section 205-6, Hawaii Revised Statutes, is
12 amended by amending subsection (f) to read as follows:

13 "(f) Land uses substantially involving or supporting
14 educational ecotourism, related to the preservation of native
15 Hawaiian endangered, threatened, proposed, and candidate
16 species, that are allowed in an approved habitat conservation
17 plan under section 195D-21 or safe harbor agreement under
18 section 195D-22, which are not identified as permissible uses
19 within the agricultural district under sections 205-2 and 205-
20 4.5, may be permitted in the agricultural district by special
21 permit under this section, on lands with soils classified by the
22 ~~[land study bureau's]~~ office of planning's detailed land



1 classification as overall (master) productivity rating class C,
2 D, E, or U."

3 SECTION 7. Section 226-53, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§226-53 Office of planning; duties. The office shall
6 provide technical assistance in administering this chapter. To
7 further the intent and purpose of this chapter, the office
8 shall:

- 9 (1) Provide recommendations to the governor and state and
10 county agencies on conflicts between and among this
11 chapter, state functional plans approved by the
12 governor, county general plans and development plans,
13 and state programs;
- 14 (2) Review and evaluate this chapter and recommend
15 amendments as needed to the legislature;
- 16 (3) Review, as necessary, major plans, programs, projects,
17 and regulatory activities proposed by state and county
18 agencies, and provide advisory opinions and reports to
19 the governor as needed;
- 20 (4) Analyze existing state policies, planning and program
21 operations, laws, rules, and practices relative to



- 1 formulation, implementation, and coordination of the
2 state plan;
- 3 (5) Review state capital improvement projects for
4 consistency with this chapter and as necessary report
5 findings and recommendations to the governor prior to
6 allocation of funds;
- 7 (6) Conduct strategic planning by identifying and
8 analyzing significant issues, problems, and
9 opportunities confronting the State, and formulating
10 strategies and alternative courses of action in
11 response to identified problems and opportunities;
- 12 (7) Conduct special studies and prepare reports that
13 address major policy issues relating to statewide
14 growth and development;
- 15 (8) Cooperate with all public agencies to ensure an
16 ongoing, uniform, and reliable base of data and
17 projections;
- 18 (9) Assist the legislature in conducting reviews of parts
19 I, II, and III as necessary;
- 20 (10) Provide other technical assistance to the governor and
21 state and county agencies as needed; [and]



1 (11) Prepare a report identifying emerging issues for use
 2 in the revision of parts I and III, including the
 3 updating of state functional plans. The report may
 4 include a scan of conditions and trends in population,
 5 the economy, and the environment, linking the findings
 6 of the state scanning project with policy and program
 7 activities[-]; and

8 (12) Every twenty years beginning in 2014, establish a
 9 detailed land classification of overall (master)
 10 productivity ratings.

11 The office may contract with public and private agencies and
 12 persons for special research and planning assistance."

13 SECTION 8. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect upon its approval;
 16 provided that the amendments made by sections 2, 3, 4, 5, and 6
 17 of this Act shall take effect on July 1, 2014.

18

INTRODUCED BY:



H.B. NO. 1120

Report Title:

Office of Planning; Detailed Land Classification; Productivity

Description:

Requires the office of planning to establish a detailed land classification of overall (master) productivity ratings every 20 years, beginning in 2014.

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

