
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

- 1 SECTION 1. 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:



1 (A) This paragraph shall apply only to land with soil
2 classified by the land study bureau's detailed
3 land classification as overall (master)
4 productivity rating class B, C, D, or E; and

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

10 (7) Bona fide agricultural services and uses that support
11 the agricultural activities of the fee or leasehold
12 owner of the property and accessory to any of the
13 above activities, regardless of whether conducted on
14 the same premises as the agricultural activities to
15 which they are accessory, including farm dwellings as
16 defined in section 205-4.5(a)(4), employee housing,
17 farm buildings, mills, storage facilities, processing
18 facilities, photovoltaic, biogas, and other small-
19 scale renewable energy systems producing energy solely
20 for use in the agricultural activities of the fee or
21 leasehold owner of the property, agricultural-energy
22 facilities as defined in section 205-4.5(a)(17),



- 1 vehicle and equipment storage areas, and plantation
2 community subdivisions as defined in section
3 205-4.5(a)(12);
- 4 (8) Wind machines and wind farms [7], except on the islands
5 of Molokai and Lanai; provided that no wind machine or
6 wind farm shall be:
- 7 (A) Visible from any residential subdivision; or
8 (B) Less than two miles from any residential
9 subdivision;
- 10 (9) Small-scale meteorological, air quality, noise, and
11 other scientific and environmental data collection and
12 monitoring facilities occupying less than one-half
13 acre of land; provided that these facilities shall not
14 be used as or equipped for use as living quarters or
15 dwellings;
- 16 (10) Agricultural parks;
- 17 (11) Agricultural tourism conducted on a working farm, or a
18 farming operation as defined in section 165-2, for the
19 enjoyment, education, or involvement of visitors;
20 provided that the agricultural tourism activity is
21 accessory and secondary to the principal agricultural
22 use and does not interfere with surrounding farm



1 operations; and provided further that this paragraph
2 shall apply only to a county that has adopted
3 ordinances regulating agricultural tourism under
4 section 205-5;

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

16 (13) Open area recreational facilities;

17 ~~[(14)]~~ ~~[(14)]~~ Geothermal resources exploration and geothermal
18 resources development, as defined under section 182-1;
19 and

20 ~~[(15)]~~ ~~[(15)]~~ Agricultural-based commercial operations, including:
21 (A) A roadside stand that is not an enclosed
22 structure, owned and operated by a producer for

1 the display and sale of agricultural products
2 grown in Hawaii and value-added products that
3 were produced using agricultural products grown
4 in Hawaii;

5 (B) Retail activities in an enclosed structure owned
6 and operated by a producer for the display and
7 sale of agricultural products grown in Hawaii,
8 value-added products that were produced using
9 agricultural products grown in Hawaii, logo items
10 related to the producer's agricultural
11 operations, and other food items; and

12 (C) A retail food establishment owned and operated by
13 a producer and permitted under [H]title 11, [H]
14 chapter 12 of the rules of the department of
15 health that prepares and serves food at retail
16 using products grown in Hawaii and value-added
17 products that were produced using agricultural
18 products grown in Hawaii.

19 The owner of an agricultural-based commercial
20 operation shall certify, upon request of an officer or
21 agent charged with enforcement of this chapter under
22 section 205-12, that the agricultural products



1 displayed or sold by the operation meet the
2 requirements of this paragraph.

3 Agricultural districts shall not include golf courses and golf
4 driving ranges, except as provided in section 205-4.5(d).

5 Agricultural districts include areas that are not used for, or
6 that are not suited to, agricultural and ancillary activities by
7 reason of topography, soils, and other related characteristics."

8 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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

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

17 (2) Game and fish propagation;

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

21 (4) Farm dwellings, employee housing, farm buildings, or
22 activities or uses related to farming and animal



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

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

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

15 (7) Public, private, and quasi-public utility lines and
16 roadways, transformer stations, communications
17 equipment buildings, solid waste transfer stations,
18 major water storage tanks, and appurtenant small
19 buildings such as booster pumping stations, but not
20 including offices or yards for equipment, material,
21 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
22 pineapple plantation; provided that the existing



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

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

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

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

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



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

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

14 (15) Wind energy facilities, including the appurtenances
15 associated with the production and transmission of
16 wind generated energy; provided that [the]:

17 (A) The wind energy facilities and appurtenances are
18 compatible with agriculture uses and cause
19 minimal adverse impact on agricultural land;

20 (B) Wind energy facilities shall not be a permitted
21 use on the islands of Molokai and Lanai;

1 (C) No wind energy facility shall be visible from any
2 residential subdivision;

3 (D) No wind energy facility shall be less than two
4 miles from any residential subdivision; and

5 (E) No wind energy facility shall produce excessive
6 noise pollution;

7 For the purposes of this paragraph:

8 "Excessive noise pollution" means the presence of
9 sound of a volume or in quantities and for durations
10 that diminish the quality of life of any resident;

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

19 For the purposes of this paragraph:

20 "Appurtenances" means operational infrastructure
21 of the appropriate type and scale for economic
22 commercial storage and distribution, and other similar

1 handling of feedstock, fuels, and other products of
2 biofuel processing facilities.

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

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

22 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; provided that, for the purposes of this
21 paragraph, "wireless communication antenna" means
22 communications equipment that is either freestanding



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

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



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 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Mel Cansell
(By Request)

JAN 24 2013



H.B. NO. 1335

Report Title:

Agricultural Lands; Wind Energy Facilities; Permitted Use

Description:

Prohibits wind energy facilities on agricultural lands on the islands of Molokai and Lanai. Prohibits wind energy facilities that are visible from or are within 2 miles of any residential subdivision. Prohibits excessive noise pollution from wind energy facilities on class A or B agricultural lands.

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