



GOV. MSG. NO. 1155

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 30, 2014

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813


The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 30, 2014, the following bill was signed into law:

SB2658 SD3 HD2

RELATING TO SOLAR ENERGY
ACT 055 (14)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

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RECEIVED
THE SENATE
CLERK'S OFFICE
STATE OF HAWAII

'14 APR 30 P2:12

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

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Approved by the Governor

on APR 30 2014

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

ACT 055
S.B. NO. 2658
S.D. 3
H.D. 2

A BILL FOR AN ACT

RELATING TO SOLAR ENERGY.

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

1 SECTION 1. The purpose of this Act is to enable the
2 complementary uses of utility scale solar energy generation and
3 local food production on agricultural land with an overall
4 productivity rating of class B or C.

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

7 "(d) Agricultural districts shall include:

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



- 1 (5) Biofuel production, as described in section
2 205-4.5(a)(16), 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[+], unless a
14 special use permit is granted pursuant to section
15 205-6;
- 16 (7) Bona fide agricultural services and uses that support
17 the agricultural activities of the fee or leasehold
18 owner of the property and accessory to any of the
19 above activities, regardless of whether conducted on
20 the same premises as the agricultural activities to
21 which they are accessory, including farm dwellings as
22 defined in section 205-4.5(a)(4), employee housing,



1 farm buildings, mills, storage facilities, processing
2 facilities, photovoltaic, biogas, and other small-
3 scale renewable energy systems producing energy solely
4 for use in the agricultural activities of the fee or
5 leasehold owner of the property, agricultural-energy
6 facilities as defined in section 205-4.5(a)(17),
7 vehicle and equipment storage areas, and plantation
8 community subdivisions as defined in section
9 205-4.5(a)(12);

10 (8) Wind machines and wind farms;

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

17 (10) Agricultural parks;

18 (11) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is
22 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm
2 operations; and provided further that this paragraph
3 shall apply only to a county that has adopted
4 ordinances regulating agricultural tourism under
5 section 205-5;

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

17 (13) Open area recreational facilities;

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

21 [+(15)] Agricultural-based commercial operations, including:



- 1 (A) A roadside stand that is not an enclosed
- 2 structure, owned and operated by a producer for
- 3 the display and sale of agricultural products
- 4 grown in Hawaii and value-added products that
- 5 were produced using agricultural products grown
- 6 in Hawaii;
- 7 (B) Retail activities in an enclosed structure owned
- 8 and operated by a producer for the display and
- 9 sale of agricultural products grown in Hawaii,
- 10 value-added products that were produced using
- 11 agricultural products grown in Hawaii, logo items
- 12 related to the producer's agricultural
- 13 operations, and other food items; and
- 14 (C) A retail food establishment owned and operated by
- 15 a producer and permitted under [‡]title 11, [‡]
- 16 chapter 12 of the rules of the department of
- 17 health that prepares and serves food at retail
- 18 using products grown in Hawaii and value-added
- 19 products that were produced using agricultural
- 20 products grown in Hawaii.
- 21 The owner of an agricultural-based commercial
- 22 operation shall certify, upon request of an officer or

1 agent charged with enforcement of this chapter under
2 section 205-12, that the agricultural products
3 displayed or sold by the operation meet the
4 requirements of this paragraph.

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 and for solar energy facilities, class B or C, shall be
16 restricted to the following permitted uses:

- 17 (1) Cultivation of crops, including crops for bioenergy,
18 flowers, vegetables, foliage, fruits, forage, and
19 timber;
- 20 (2) Game and fish propagation;



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



1 major water storage tanks, and appurtenant small
2 buildings such as booster pumping stations, but not
3 including offices or yards for equipment, material,
4 vehicle storage, repair or maintenance, treatment
5 plants, corporation yards, or other similar
6 structures;

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

9 (9) Agricultural-based commercial operations as described
10 in section [205-2(d)(15)];

11 (10) Buildings and uses, including mills, storage, and
12 processing facilities, maintenance facilities,
13 photovoltaic, biogas, and other small-scale renewable
14 energy systems producing energy solely for use in the
15 agricultural activities of the fee or leasehold owner
16 of the property, and vehicle and equipment storage
17 areas that are normally considered directly accessory
18 to the above-mentioned uses and are permitted under
19 section 205-2(d);

20 (11) Agricultural parks;

21 (12) Plantation community subdivisions, which as used in
22 this chapter means an established subdivision or



1 cluster of employee housing, community buildings, and
2 agricultural support buildings on land currently or
3 formerly owned, leased, or operated by a sugar or
4 pineapple plantation; provided that the existing
5 structures may be used or rehabilitated for use, and
6 new employee housing and agricultural support
7 buildings may be allowed on land within the
8 subdivision as follows:

9 (A) The employee housing is occupied by employees or
10 former employees of the plantation who have a
11 property interest in the land;

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

15 (C) The agricultural support buildings shall be
16 rented or leased to agricultural business
17 operators or agricultural support services;

18 (13) Agricultural tourism conducted on a working farm, or a
19 farming operation as defined in section 165-2, for the
20 enjoyment, education, or involvement of visitors;
21 provided that the agricultural tourism activity is
22 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm
2 operations; and provided further that this paragraph
3 shall apply only to a county that has adopted
4 ordinances regulating agricultural tourism under
5 section 205-5;

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

17 (15) 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;



1 (16) Biofuel processing facilities, including the
2 appurtenances associated with the production and
3 refining of biofuels that is normally considered
4 directly accessory and secondary to the growing of the
5 energy feedstock; provided that biofuel processing
6 facilities and appurtenances do not adversely impact
7 agricultural land and other agricultural uses in the
8 vicinity.

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure
11 of the appropriate type and scale for economic
12 commercial storage and distribution, and other similar
13 handling of feedstock, fuels, and other products of
14 biofuel processing facilities.

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



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

13 As used in this paragraph:

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

16 "Agricultural-energy enterprise" means an
17 enterprise that integrally incorporates an
18 agricultural activity with an agricultural-energy
19 facility.

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

4 "Appurtenances" means operational infrastructure
5 of the appropriate type and scale for the economic
6 commercial generation, storage, distribution, and
7 other similar handling of energy, including equipment,
8 feedstock, fuels, and other products of agricultural-
9 energy facilities;

10 (18) Construction and operation of wireless communication
11 antennas; provided that, for the purposes of this
12 paragraph, "wireless communication antenna" means
13 communications equipment that is either freestanding
14 or placed upon or attached to an already existing
15 structure and that transmits and receives
16 electromagnetic radio signals used in the provision of
17 all types of wireless communications services;
18 provided further that nothing in this paragraph shall
19 be construed to permit the construction of any new
20 structure that is not deemed a permitted use under
21 this subsection;



- 1 (19) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this section, "agricultural education programs" means
10 activities or events designed to promote knowledge and
11 understanding of agricultural activities and practices
12 conducted on a farming operation as defined in section
13 165-2;
- 14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser[+] or for which a
17 special use permit is granted pursuant to section 205-
18 6; provided that this use shall not be permitted on
19 lands with soil classified by the land study bureau's
20 detailed land classification as overall (master)
21 productivity rating class A; [ø]



1 (21) Solar energy facilities on lands with soil classified
2 by the land study bureau's detailed land
3 classification as overall (master) productivity rating
4 B or C for which a special use permit is granted
5 pursuant to section 205-6; provided that:

6 (A) The area occupied by the solar energy facilities
7 is also made available for compatible
8 agricultural activities at a lease rate that is
9 at least fifty per cent below the fair market
10 rent for comparable properties;

11 (B) Proof of financial security to decommission the
12 facility is provided to the satisfaction of the
13 appropriate county planning commission prior to
14 date of commencement of commercial generation;
15 and

16 (C) Solar energy facilities shall be decommissioned
17 at the owner's expense according to the following
18 requirements:

19 (i) Removal of all equipment related to the
20 solar energy facility within twelve months
21 of the conclusion of operation or useful
22 life; and



1 (ii) Restoration of the disturbed earth to
2 substantially the same physical condition as
3 existed prior to the development of the
4 solar energy facility.

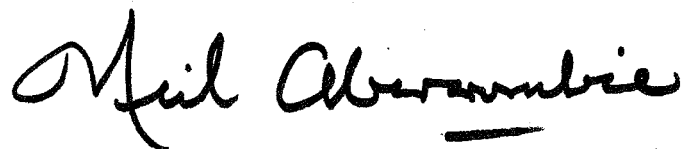
5 For the purposes of this paragraph, "agricultural
6 activities" means the activities described in
7 paragraphs (1) to (3); or

8 ~~[(21)]~~ (22) Geothermal resources exploration and geothermal
9 resources development, as defined under section
10 182-1."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

APPROVED this 30 day of APR, 2014



GOVERNOR OF THE STATE OF HAWAII