

NEIL ABERCROMBIE
Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

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Deputy to the Chairperson

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DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL
PROTECTION, AND WATER AND LAND
TUESDAY, MARCH 25, 2014
8:30 A.M.
Room 325**

**SENATE BILL NO. 2775, HOUSE DRAFT 1
RELATING TO RENEWABLE ENERGY**

Chairpersons Lee and Evans and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2775, House Draft 1 that allows solar energy facilities on "A" rated agricultural land but limits them to existing roadways, must allow for vehicular traffic, the property has a valid county agriculture tax dedication status or valid agricultural conservation, and has been granted a special use permit by the Land Use Commission. The Department of Agriculture supports the intent of this measure, but defers to the Office of Planning and the Land Use Commission regarding the necessity of a special use permit.

Only 3.1 percent of the Agricultural District is rated as "A" and has very good productive potential for most crops. Furthermore, "A" rated lands are more likely to be considered and designated as Important Agricultural Lands.

Thank you, again, for the opportunity to testify on this measure.





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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
And
HOUSE COMMITTEE ON WATER & LAND

Tuesday, March 25, 2014
8:30 a.m.

State Capitol, Conference Room 325

in consideration of
SB 2775, SD1, HD1
RELATING TO RENEWABLE ENERGY.

Chairs Lee and Evans, Vice Chairs Thielen and Lowen, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on SB 2775, SD1, HD1, which seeks to make solar energy facilities a permissible use within the State Agricultural District on lands classified by the Land Study Bureau (LSB) as Class A, provided that: the solar energy facilities are on a roadway established by December 31, 2013, that still allows vehicular traffic; the parcel upon which the facility is located has a valid agricultural easement or county tax deduction status; and the facility has a Special Use Permit.

The Energy Policy of the State of Hawaii calls for balancing technical, economic, environmental, and cultural considerations in developing energy projects. DBEDT notes that by permitting non-agricultural uses in the State Agricultural District, agricultural use may decline due to farmers shifting away from farm operations in anticipation of other kinds of development. For that reason, it has been the policy of the State to not support energy production on those lands most suitable for agricultural production such as LSB Class A lands. Our goal is to achieve an appropriate long-term balance between food and energy security in the management and use of Hawaii's scarce agricultural lands.

Thank you for the opportunity to provide these comments.



**OFFICE OF PLANNING
STATE OF HAWAII**

NEIL ABERCROMBIE
GOVERNOR

LEO R. ASUNCION
ACTING DIRECTOR
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Statement of
LEO R. ASUNCION
Acting Director, Office of Planning
before the
**HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
AND
HOUSE COMMITTEE ON WATER AND LAND**

Tuesday, March 25, 2014
8:30 AM
State Capitol, Conference Room 325

in consideration of
SB 2775 SD1 HD1
RELATING TO RENEWABLE ENERGY.

Chairs Lee and Evans, Vice Chairs Thielen and Lowen, and Members of the House Committees Energy and Environmental Protection and Water and Land.

Senate Bill (SB) 2775, SD1, HD1, amends the State Land Use Law at Hawaii Revised Statutes (HRS) §§ 205-2 and 205-4.5, to allow “solar energy facilities” within the State Agricultural Land Use District¹ on soils rated by the Land Study Bureau's Overall Productivity Rating (LSB) as “A.”²

¹ See HRS § 205-2 (“There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation.” As of November 12, 2013, approximately 49% of lands in the state are in the Conservation District and 46% is in the Agricultural District.)

² See *Land Study Bureau (LSB) Detailed Land Classification*, Office of Planning, at <http://files.hawaii.gov/dbedt/op/gis/data/lsb.pdf> (The Land Study Bureau of the University of Hawaii prepared an inventory and evaluation of the State's land resources during the 1960's and 1970's. The Bureau grouped all lands in the State, except those in the urban district, into homogeneous units of land types; described their condition and environment; rated the land on its over-all quality in terms of agricultural productivity; appraised its performance for selected alternative crops; and delineated the various land types and groupings based on soil properties and productive capabilities. A five-class productivity rating system was developed with “A” representing the class of highest productivity and “E” the lowest. Ratings were developed for both over-all productivity, and for specific crops. HRS Chapter 205 uses over-all productivity ratings.)

Currently, these statutory provisions allow solar energy facilities within the State Agricultural District on LSB “B” and “C” lands so long as the facilities do not cover more than 10 percent or 20 acres (whichever is lesser). However, the amendment to HRS §§ 205-2 and 205-4.5 would extend the land coverage of solar energy facilities to LSB “A” lands so long as the solar energy facilities are: (1) located on a paved or unpaved road in existence as of December 31, 2013; (2) placed in a manner that still allows vehicular traffic to use the road; and (3) granted a Special Use Permit by the commission pursuant to section 205-6. The Hawaii State Plan, passed by the legislature in 1978 and subsequently amended, promotes both agriculture and the promotion and development of renewable energy for current and future generations.³ As the Committee balances these complex, often competing policy objectives, we provide the following comments for your consideration:

- Statewide, LSB soil productivity ratings of lands within the State Agricultural District are distributed as follows:
 - 3.1%, LSB “A”
 - 6.2%, LSB “B”
 - 14.9%, LSB “C”
 - 24.9%, LSB “D”
 - 50.9%, LSB “E”
- The counties and the State have not completed the process of identifying important agricultural lands (IAL) to the State of Hawaii. The intent of the IAL law is to “conser[ve] the State's agricultural land resource base and assur[e] the long-term availability of agricultural lands for agricultural use[.]”⁴ The IAL law, passed in 2005, implements Article XI, Section 3, of the Hawaii State Constitution, which directs the State to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”
- Allowing non-agricultural uses in the State Agricultural District may contribute to the impermanence syndrome, whereby agricultural use declines due to farmers’ disinvestment in their farm operations in anticipation of development. This has been

³ See HRS §§ 226-7 and 226-18 (relating to the State’s “Objectives and policies for the economy—agriculture” and “Objectives and policies for facility systems—energy,” respectively).

⁴ HRS § 205-41.

observed to occur where competing uses are allowed in areas designed for agricultural uses.⁵

- The list of non-agricultural uses on LSB “B” and “C” lands has grown over time. Currently, HRS § 205-2 allows the following non-agricultural uses: wind generated energy production; biofuel production; limited solar energy facilities; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities; open area recreational facilities; and geothermal resources exploration and geothermal resources development. The list of non-food related uses is longer still.
- The State Special Permit under HRS § 205-6 grants counties the authority to allow “certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified[.]” In other words, the Special Permit process allows uses in the State Agricultural District that are not agricultural uses or related to agricultural uses on a case-by-case basis. Although we do not advocate for allowing non-agricultural uses within the State Agricultural District, this established process allows counties to review non-agricultural uses to mitigate impacts on the State Agricultural District.

Thank you for the opportunity to testify on this measure.

⁵ *Impermanence Syndrome – Have you got it?*, Rutgers, at <http://njsustainingfarms.rutgers.edu/farmlandissues.html> (last visited, Feb. 3, 2014).

NEIL ABERCROMBIE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

RICHARD LIM
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission
Before the
House Committees on
Energy and Environmental Protection
and
Water and Land
March 25, 2014
8:30 AM
State Capitol, Conference Room 325

In consideration of
SB 2775 SD1 HD1
RELATING TO RENEWABLE ENERGY

Chairs Lee and Evans, Vice Chairs Thielen and Lowen, and members of the Committees on Energy and Environmental Protection and Water and Land.

The Land Use Commission takes no position with regard to the policy considerations raised by this measure. We do, however, offer the following comments regarding SB 2775 SD1 HD1 that seeks to make solar energy facilities a permissible use within the State Agricultural District on lands classified by the Land Study Bureau (LSB) as class A.

We recommend that solar energy facilities proposed for LSB class A, B, or C lands be required to go through the State Special Permit process. In particular, facilities proposed for our most important LSB class A lands, regardless of acreage, should require approval by the State Land Use Commission. This process, along with any specific limitations on parcel percentage (%) or acreage the Legislature may require, can insure that an open public forum is used to balance competing uses on our best agricultural lands and identify the parties responsible for implementing and enforcing any conditions of approval.

We would also like to point out that another bill, SB2658 SD3 HD1, also proposes to amend the same sections of Chapter 205 with respect to allowing solar energy facilities in the State Agricultural District. Some consideration should be given to whether passage of these bills separately might create conflicts with each other.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

March 25, 2014

The Honorable Chris Lee, Chair
and Members of the Committee on Energy &
Environmental Protection
The Honorable Cindy Evans, Chair
and Members of the Committee on Water & Land
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Lee and Evans and Committee Members:

**SUBJECT: Senate Bill No. 2775, SD1, HD1
Relating to Renewable Energy**

The Department of Planning and Permitting (DPP) **supports the intent of** Senate Bill No. 2775, SD1, HD1, which addresses solar energy facilities on Class A lands under the State agricultural district. It would allow the facilities on areas used as roads under specified conditions, including obtaining a special use permit.

We support the use of some types of "A-rated" lands for uses such as photovoltaic farms. However, we do not believe that State law should itemize specific conditions under which A-rated lands can be used for solar energy facilities. While we have no objections to the use of roadways for energy facilities, there may be other types of lands that should also be considered, but would not be allowed due to omission in State law. This includes areas already occupied by buildings, or ravine areas, or areas that cannot be used for farming due to lack of agriculture infrastructure. Recent experience also shows that complete dependence on Land Study Bureau (LSB) maps can lead to unreasonable results.

Thus, we believe that Sec. 205-6, HRS should be amended to reflect performance standards, rather than delineating specific circumstances, as suggested below:

"g) Solar energy facilities that are not accessory to a permitted use may be permitted by special permit on lands designated by the LSB's detailed land classification as overall (master) productivity rating as Class A or B, provided the following are met:

- (1) Use of the land for solar energy generation does not question the viability of the agricultural district classification of the land;
- (2) The lands, either occupied by the solar energy facility on remainder lands within the same property, shall be used for agricultural purposes, if only for livestock grazing, as confirmed by annual photo documentation;

The Honorable Chris Lee, Chair
and Members of the Committee on Energy &
Environmental Protection
The Honorable Cindy Evans, Chair
and Members of the Committee on Water & Land
Hawaii State House of Representatives
Re: Senate Bill No. 2775, SD1, HD1
March 25, 2014
Page 2

- (3) It can be demonstrated that lands can be returned to in-ground crop cultivation or livestock production once solar energy generation ceases;
- (4) Facilities do not negatively impact adjoining agricultural uses;
- (5) Facilities are appropriately buffered or screened to reduce visual impacts to a rural landscape, particularly as viewed from public highways."

Given the above amendment, lands designated by the LSB's detailed land classification as overall (master) productivity rating Class C, D, E, or unclassified, shall be allowed solar energy facilities as permitted uses, and do not need special permits. Further, this strategy should be considered an interim response to balancing energy needs with agricultural needs until Important Agricultural Lands have been designated, and more comprehensive approaches can be addressed to better define the balance between these two important public policies.

Thank you for the opportunity to testify.

Very truly yours,



George I. Atta, FAICP
Director

GIA:cl
SB2775sd1-ks

SB2775

Submitted on: 3/21/2014

Testimony for EEP/WAL on Mar 25, 2014 08:30AM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------|---------------------------|---------------------------|
| Alan Gottlieb | Hawaii Cattlemen's Council | Support | No |

Comments:

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Hawaii Agriculture Research Center

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**TESTIMONY BEFORE THE HOUSE COMMITTEES
ON ENERGY AND ENVIRONMENTAL PROTECTION
and
ON WATER AND LAND**

SENATE BILL 2775, SD1 HD1

RELATING TO RENEWABLE ENERGY

**Tuesday, March 25, 2014
8:30am**

Chairs Chris Lee and Cindy Evans and Vice Chairs Cynthia Thielen and Nicole Lowen and Members of your Committees:

My name is Stephanie Whalen, the Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today in **support of SB 2775 SD1 HD1 Relating to Renewable Energy**; however, HARC is requesting a reconsideration of some of the amendments made to the Senate version.

The SB2775 SD1 would allow solar energy facilities on Land Study Bureau (LSB) land with the classification "A" - the State's most productive land. This language was chosen to allow a solar energy facility only on land under the classification "A" that has a paved or unpaved road in existence as of December 31, 2013, and are placed in a manner that still allows vehicular traffic to use the road.

I will focus my testimony on the changes that were proposed in the House Draft 1:

The Department of Agriculture proposed language that further clarifies that the property is really about agriculture: having a county agriculture tax dedication status or an agricultural conservation easement. HARC believes this further restricts the parcel and helps to avoid any undesirable use of the proposed use of solar energy facilities on agricultural land classified as A and strongly supports this addition. Section 205-4.5 (20) (A) (B). Actually the language specifically proposed by the Department in its previous testimony is also adequate and reads:

unless the solar energy facilities are located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land with paved or unpaved roads has a valid county tax dedication status or a valid agricultural conservation easement, and the solar energy facilities are placed in a manner that still allows vehicular traffic to use the road;

While we understand the reasoning of DBEDT to put parcels through the State Special Use Permit process based on the Senate Draft 1 language we believe that the provision proposed by the Department of Agriculture and added in the House Draft 1 amendment would address abuses

that the agency is concerned about. Clarifying the language of Section 205-4.5 (20) and providing guidance for use of solar facilities on LSB land classified as A as was suggested by the Oahu county administrator is sufficient for the counties to make informed and reasoned decisions regarding agricultural land in their jurisdictions.

We propose **eliminating (20) (C) Granted a special use permit by the commission pursuant to section 205-6**

adding and after the semicolon of paragraph (A) and eliminating the and at the end of paragraph (B). In light of the HDOA's proposed language and its incorporation into the HD1 amendment, (C) is not necessary as the counties will have sufficient guidance to make informed decisions for their agricultural lands.

Or just using the HDOA's language as printed above.

IN this same discussion HARC also believes that the restriction of 'existing' puts the burden on any applicant to prove that the road was existing and not on the public agency hearing a request to put a solar facility on "A" land. There is sufficient technology available through Google Maps and the like to visually verify this existence. Historical maps are available on line and else where.

Lastly HARC would like to address Section 3. While it doesn't oppose a sunset clause (1), it vigorously opposes (2). It understands why this removal clause is being put on solar energy facilities where the facility is the primary function; however where the agricultural operation stands to benefit as well this should clearly be a decision determined by the agricultural owner of the land and the solar facility. An agricultural owner clearly can see a future value in owning a renewable energy facility and having all the renewable energy benefits under its direct control and directly for its sole benefit. It should have the decision whether to remove or retain the solar facility. HARC believes strongly that this should be a contract decision not a political one.

HARC has operated for over 100 years and expects to operate for the next 100+ or at least as long as agriculture is valued in this state. It has placed the limited land it owns into an agricultural conservation easement **protecting the agricultural use of the land into perpetuity**. It is serious about agriculture and its viability. Both the state and federal government hold our easement and HARC has a 3rd party confirm its adherence to the easement restrictions annually. Both the federal and state holders of this easement support the use of the paved road on HARC's parcel for a solar facility. They recognize it supports the sustainability of HARC's operation by reducing its electrical costs. While for the first 20 years this has some value (which is negotiated), HARC has a long view of its mission and sees a tremendous value of this facility to its future viability. Every solar facility must negotiate with the owner the use of his land if they are not the owners. Herein lies the value for agriculture. If renewable energy has value to Hawaii's future, then clearly in 20 years these facilities will continue to have value. If not, they will be removed; if they do, then the agricultural operation will benefit from that value and contribute to the state's renewable energy sustainability, not just for 20 years but beyond. HARC takes the long view and has taken serious steps to commit to that vision.

We propose totally **eliminating (2)** under Section 3 of HD1 as detrimental to an agricultural operation.

The following provides some background information and why this proposed action has been

brought to the legislature's attention. **Very specifically, some LSB A land does not fit the criteria for A land.** It is not in agricultural production; is not suited for agricultural production and will not be in agricultural production either because of cost or legal situations.

As an example of a current predicament, let me describe an area where PV is ideal because a) of the parcel's location (see attachment) in an area of high solar radiation, b) there being a pre-existing agricultural field road needed to access areas of the farm (over which there is also a utility easement and under which lies seven feet of fill material), and c) the use of the road would have been preserved because the PV was to be elevated; but because the road was technically on LSB "A" land, DPP Director George Atta, ". . . regretfully recommends denial of the Applicant's request to establish a solar energy facility on lands rated class "A" by the Land Study Bureau." However, he went on to write, "**This Project is a good project reflecting innovative thinking and flexible development concepts.** It would support the agricultural activity of HARC on the site and produce a much needed expansion of renewable energy sources for Hawaii; both major goals of the State of Hawaii and the City and County of Honolulu." This is not a choice of renewable energy over food production as seems to be the concern or thinking, **but a win-win for both.** This is an ideal site with great public visibility, whereby demonstrating the commitment both to renewable energy and agriculture without sacrificing either economic sectors' goals.

We know of other farmers, with similar situations who could also derive much needed income from passage of this bill **without** sacrificing land for crop production **and** while advancing the State's self-sustainability efforts from the standpoint of both food and energy. There is definitely a misconception that we have to choose one over the other. This is not the only serious problem we, as a state, are having in agriculture where an 'either/or' situation is advocated or perceived. Those of us in the business of agriculture look for encompassing solutions not 'win/lose' dilemmas. (See attachment for other agricultural situations are advocated as either/or.)

We also understand that there is a concern over opening "A" land to non-agricultural activities which HARC certainly shares. HARC is an agricultural organization that has supported the development of agriculture in the state for over 100 years. It certainly has fought to keep agricultural land in agriculture over the decades and would not want to be the organization that opened the door to abusive use on any agricultural land. However, we believe strongly that providing reasonable options for 'A' land that does not fit the 'A' land criteria supports the long term viability of agriculture.

HARC respectfully asks for your support to amend SB2775 SD1 HD1 as proposed above and offer any help we can be to accomplish that.

I apologize for the length of my testimony but feel there remains some misunderstanding of the goal of this proposed bill. Its focus is on agriculture and how it can benefit from solar energy facilities not the other way around.

Thank you for your attention and I would be happy to answer any questions.

Attachments (*picture of Cane Haul Road*)(*Either/or issues that should not be imposed on*

SB2775

Submitted on: 3/23/2014

Testimony for EEP/WAL on Mar 25, 2014 08:30AM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Chris Manfredi | Hawaii Farm Bureau | Support | Yes |

Comments:

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LATE

SB2775

Submitted on: 3/24/2014

Testimony for EEP/WAL on Mar 25, 2014 08:30AM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Duane K. Okamoto | Individual | Support | No |

Comments: I support SB2775 and recommend that the committee adopt HARC and the Hawaii Department of Agriculture's recommendations.

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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 House Committees on
ENERGY & ENVIRONMENTAL PROTECTION
and
WATER & LAND AFFAIRS**

**Tuesday, March 25, 2014
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2775, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO RENEWABLE ENERGY**

Senate Bill 2775, Senate Draft 1, House Draft 1 proposes to amend Hawaii Revised Statutes §205-4.5 to permit a solar energy facility on class A lands if the facility is located on existing roadways, allows for continued vehicular use, is granted a special use permit pursuant to Hawaii Revised Statutes §205-6, and the parcel on which the facility is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement.

The Department strongly supports the Hawaii Agriculture Research Center's testimony and proposed amendments.

This proposal offers an important opportunity to make a real economic difference for farmers in Hawaii. The process should not be made so complex that it becomes unworkable.

The Special Use Permit is unnecessary given the other conditions that will limit and restrict the uses. The Department of Agriculture's testimony and proposal is a good solution and should be considered.

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

JESSEK SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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