

SB2775

Testimony

Prohibits solar energy facilities on agricultural lands from interfering with farm operations and causing more than a minimum adverse impact on the land.



Hawaii Agriculture Research Center

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**TESTIMONY BEFORE THE SENATE COMMITTEE
ON AGRICULTURE
and the
SENATE COMMITTEE ON
ENERGY AND ENVIRONMENT**

SENATE BILL 2775

**RELATING TO RENEWABLE ENERGY
Thursday, February 27, 2014**

Chair Nishihara Vice Chair Kouchi and Chair Gabbard, Vice Chair Ruderman and Members of the Committees:

My name is Blake Vance, Assistant Director of the Hawaii Agriculture Research Center (HARC). I am testifying today in **support of SB 2775** on behalf of the center and our research and support staff.

SB2775 would currently allow solar energy facilities on Land Study Bureau (LSB) land with the classification "A" - the State's most productive land. This language was chosen because it paralleled that passed for "B" and "C" lands in July 2011. The bill reduces the percent and acreage allocation of the parcel that could be used for photovoltaics (PV) below that permitted for "B" & "C" lands. SB2775 also stipulates that the PV not materially interfere with farm operations *and* not cause more than a minimal adverse impact on existing or potential ag uses.

Nonetheless, there was concern that "A" land could be sacrificed for PV. Therefore, in consultation with various senators, we now suggest the following language that should eliminate those concerns:

Delete Section 1, related to Section 205-2 of the HRS, thereby removing item 7, which had been the new language to allow solar energy facilities on LSB A land.

Instead, revise item 20 in Section 2, related to Section 205-4.5 of the HRS as follows:

Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A[?] unless the solar energy facilities are located on 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; or ...

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 ag field road needed to access areas of the farm (over which there is also a utility easement), 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".

We know of other farmers, with field roads who could also derive much needed income from passage of this bill **without** sacrificing land for crop production **and** advancing the State's self-sustainability efforts from the standpoint of both food and energy.

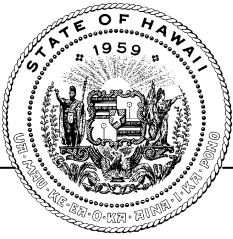
I respectfully ask for your support of SB2775 so revised. Thank you for your attention and I would be happy to answer any questions.

Attachment (*picture of Cane Haul Road*)



Exhibit 1

Cane Haul Road marked in red.



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GOVERNOR

JESSE K. SOUKI
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Statement of
JESSE K. SOUKI
Director, Office of Planning
before the
**SENATE COMMITTEE ON AGRICULTURE
AND
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**

Thursday, February 27, 2014
2:30 PM
State Capitol, Conference Room 229

in consideration of
SB 2775
RELATING TO RENEWABLE ENERGY.

Chairs Nishihara and Gabbard, Vice Chairs Kouchi and Ruderman, and Members of the Senate Committees on Agriculture and Energy and Environment.

Senate Bill (SB) 2775 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 it does not cover more than 5 percent of the land or 5 acres (whichever is lesser). In addition, facilities shall not “materially interfere with farm operations” and shall cause only “minimal adverse impact on existing or potential agricultural uses.”³

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.⁴ 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[.]”⁵ 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.”

³ Under the Hawaii land use framework, counties would be responsible for making these determinations during permitting and/or plan approval.

⁴ 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).

⁵ HRS § 205-41.

- 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 observed to occur where competing uses are allowed in areas designed for agricultural uses.⁶
- 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. As HRS §§ 205-2 and 205-4.5 are currently drafted, Special Permits are not allowed for solar energy facilities on (1) LSB "A" lands, or (2) LSB "B" and "C" lands for more than 10 acres or 20 percent of a parcel (whichever is lesser).

Thank you for the opportunity to testify on this measure.

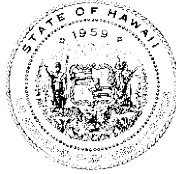
⁶ *Impermanence Syndrome – Have you got it?*, Rutgers, at <http://njsustainingfarms.rutgers.edu/farmlandissues.html> (last visited, Feb. 3, 2014).

NEIL ABERCROMBIE
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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
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Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission

Before the
Senate Committee on Agriculture
and
Committee on Energy and Environment
Thursday February 27, 2014
2:30 PM
State Capitol, Conference Room 229

In consideration of
SB 2775
RELATING TO RENEWABLE ENERGY

Chairs Nishihara and Gabbard, Vice Chairs Kouchi and Ruderman, and members of the Committees on Agriculture; and Energy and Environment:

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 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 would recommend that the measure be modified to require that solar energy facilities proposed for LSB class A, B, or C lands go through the State Special Permit process. 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.

Thank you for the opportunity to testify on this matter.



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TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND ENERGY AND
ENVIRONMENT
THURSDAY, FEBRUARY 27, 2014
2:30 P.M.
ROOM 229

SENATE BILL NO. 2775
RELATING TO RENEWABLE ENERGY

Chairpersons Nishihara and Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2775. This bill seeks to allow solar energy facilities on the highest rated agricultural lands in the State with a limitation on the acreage of a parcel that may have facilities, and conditions that require minimal interference or impact on farm operations and potential agricultural uses of the parcel. The Department of Agriculture supports the concept of allowing solar energy facilities that are compatible to agricultural activities; however, we have strong concerns about allowing solar energy facilities on prime "A" rated agricultural lands.

According to Office of Planning statistics, about 75 percent of the 1.9 million-acre Agricultural District has "D" or "E" ratings. We strongly believe that these poorer-quality agricultural lands be considered first for siting solar energy facilities. Existing State law does not impose limits on the acreage of "D" and "E" rated lands that can be used for solar energy facilities. On the other hand, "A" rated agricultural lands comprise 4 percent of Hawaii's agricultural lands, have very good capacity for intensive agricultural production, and are very likely to be considered and designated as Important Agricultural Lands.



We note that the amendments to Section 205-2 and Section 205-4.5 share the same conditions requiring minimal interference or impact on farm operations and potential agricultural uses of affected parcels. However, the limitation on the acreage of a parcel that may have facilities is not clear.

1. In Section 205-2, solar energy facilities are allowed on 5 percent of the parcel or 5 acres, whichever is less (page 2, lines 14 to 16).
2. In Section 205-4.5(a)(20), (page 15, lines 4 to 7), solar energy facilities appear to be allowed on “A” rated land without an acreage restriction.

Furthermore, according to a report done by the Natural Renewable Energy Laboratory (NREL) for the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy (Technical Report NREL/TP-6A20-60240, December 2013), “There has been minimal research regarding the potential for large-scale solar facilities to be co-located with agriculture or native vegetation. Certain renewable technologies, such as wind power, are commonly deployed in agricultural areas with little impact on farming activities, yet solar technologies have not yet seen similar developments (Holmes and Papay 2011; Beckman and Xiarchos 2013).” (emphasis added; Report, page 3)

Thank you, again, for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: gottlieb@hawaii.rr.com
Subject: Submitted testimony for SB2775 on Feb 27, 2014 14:30PM
Date: Monday, February 24, 2014 5:23:07 PM

SB2775

Submitted on: 2/24/2014

Testimony for AGL/ENE on Feb 27, 2014 14:30PM in Conference Room 229

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

Comments: We support the ammendments to this bill suggested by the Hawaii Agricultural Research Center (HARC)amending the bill to access roads, utility easements, 'A' land that is obviously not productive and has not been productive for decades.

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From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: jaymebee@gmail.com
Subject: Submitted testimony for SB2775 on Feb 27, 2014 14:30PM
Date: Tuesday, February 25, 2014 7:11:28 AM

SB2775

Submitted on: 2/25/2014

Testimony for AGL/ENE on Feb 27, 2014 14:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jamie Barton	Individual	Support	No

Comments: Please pass SB2775. This will support farmers and organizations that are trying to support the states renewable energy goals, and make these farming operations more economically secure. Thank you.

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Cc: Mchughj001@hawaii.rr.com
Subject: Submitted testimony for SB2775 on Feb 27, 2014 14:30PM
Date: Tuesday, February 25, 2014 9:28:10 AM

SB2775

Submitted on: 2/25/2014

Testimony for AGL/ENE on Feb 27, 2014 14:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John McHugh	Individual	Support	No

Comments: I support this bill as it will allow marginal areas on agricultural land that do not otherwise have any productivity possibilities. This bill will assist farmers and ranchers in installation of infrastructure that is more efficient in land use and allows them to reduce the use of energy that is currently using fossil fuel. This is consistent with the State of Hawaii goal of developing more "green" sources of energy and does not, in any way, remove productive Agriculture land rated A from farming.

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From: okamotod003@hawaii.rr.com
To: [AGL Testimony](#)
Subject: Pass SB 2775
Date: Tuesday, February 25, 2014 11:09:39 AM

Please pass SB2775

Thank you

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From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: csakoda@environetinc.com
Subject: *Submitted testimony for SB2775 on Feb 27, 2014 14:30PM*
Date: Wednesday, February 26, 2014 10:49:15 AM

SB2775

Submitted on: 2/26/2014

Testimony for AGL/ENE on Feb 27, 2014 14:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Colette Sakoda	Individual	Support	No

Comments:

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