
A BILL FOR AN ACT

RELATING TO HYDROELECTRIC POWER.

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

1 SECTION 1. The legislature finds that the development of
2 hydroelectric energy-generating facilities in Hawaii is vital to
3 the energy security and energy independence of the State.
4 Increased use of renewable energy resources will achieve broad
5 societal benefits, including resistance to oil price increases,
6 environmental sustainability, economic development, and job
7 creation.

8 The legislature further finds that while Hawaii's
9 agricultural land is a fundamentally important and diminishing
10 resource that is pivotal to the State's initiatives in food
11 security, hydroelectric facilities may be located on
12 agricultural lands in a manner that promotes both food and
13 energy security.

14 The purpose of this Act is to authorize construction of
15 small hydropower facilities as defined by the United States
16 Department of Energy in a manner that combines clean energy
17 infrastructure and irrigation for agricultural lands.



1 SECTION 2. 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 detailed
20 land classification as overall (master)
21 productivity rating class B, C, 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, unless a
6 special use permit is granted pursuant to section
7 205-6;

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



1 ~~205-4.5(a)(23),~~] vehicle and equipment storage areas,
2 and plantation community subdivisions as defined in
3 section 205-4.5(a)(12); provided that hydroelectric
4 facilities permitted under section 205-4.5(a)(23),
5 shall not be required to be an accessory to
6 agricultural land for agricultural use only;

7 (8) Wind machines and wind farms;

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

14 (10) Agricultural parks;

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



1 shall apply only to a county that has adopted
2 ordinances regulating agricultural tourism under
3 section 205-5;

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

15 (13) Open area recreational facilities;

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

19 (15) Agricultural-based commercial operations, including:
20 (A) A roadside stand that is not an enclosed
21 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 title 11, chapter
14 12 of the rules of the department of health that
15 prepares and serves food at retail using products
16 grown in Hawaii and value-added products that
17 were produced using agricultural products grown
18 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



1 section 205-12, that the agricultural products
2 displayed or sold by the operation meet the
3 requirements of this paragraph.

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

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

9 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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

- 16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;
19 (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



- 1 equipment buildings, solid waste transfer stations,
2 major water storage tanks, and appurtenant small
3 buildings such as booster pumping stations, but not
4 including offices or yards for equipment, material,
5 vehicle storage, repair or maintenance, treatment
6 plants, corporation yards, or other similar
7 structures;
- 8 (8) Retention, restoration, rehabilitation, or improvement
9 of buildings or sites of historic or scenic interest;
- 10 (9) Agricultural-based commercial operations as described
11 in section 205-2(d)(15);
- 12 (10) Buildings and uses, including mills, storage, and
13 processing facilities, maintenance facilities,
14 photovoltaic, biogas, and other small-scale renewable
15 energy systems producing energy solely for use in the
16 agricultural activities of the fee or leasehold owner
17 of the property, and vehicle and equipment storage
18 areas that are normally considered directly accessory
19 to the above-mentioned uses and are permitted under
20 section 205-2(d);
- 21 (11) Agricultural parks;



1 (12) Plantation community subdivisions, which as used in
2 this chapter means an established subdivision or
3 cluster of employee housing, community buildings, and
4 agricultural support buildings on land currently or
5 formerly owned, leased, or operated by a sugar or
6 pineapple plantation; provided that the existing
7 structures may be used or rehabilitated for use, and
8 new employee housing and agricultural support
9 buildings may be allowed on land within the
10 subdivision as follows:

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

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

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

20 (13) Agricultural tourism conducted on a working farm, or a
21 farming operation as defined in section 165-2, for the



1 enjoyment, education, or involvement of visitors;
2 provided that the agricultural tourism activity is
3 accessory and secondary to the principal agricultural
4 use and does not interfere with surrounding farm
5 operations; and provided further that this paragraph
6 shall apply only to a county that has adopted
7 ordinances regulating agricultural tourism under
8 section 205-5;

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

20 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

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

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
 2 waste cooking oils; grease; food wastes; and animal
 3 residues and wastes that can be used to generate
 4 energy;

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

17 As used in this paragraph:

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

20 "Agricultural-energy enterprise" means an
 21 enterprise that integrally incorporates an



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1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure
10 of the appropriate type and scale for the economic
11 commercial generation, storage, distribution, and
12 other similar handling of energy, including equipment,
13 feedstock, fuels, and other products of agricultural-
14 energy facilities;

15 (18) Construction and operation of wireless communication
16 antennas; provided that, for the purposes of this
17 paragraph, "wireless communication antenna" means
18 communications equipment that is either freestanding
19 or placed upon or attached to an already existing
20 structure and that transmits and receives
21 electromagnetic radio signals used in the provision of



1 all types of wireless communications services;
2 provided further that nothing in this paragraph shall
3 be construed to permit the construction of any new
4 structure that is not deemed a permitted use under
5 this subsection;

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

19 (20) Solar energy facilities that do not occupy more than
20 ten per cent of the acreage of the parcel, or twenty
21 acres of land, whichever is lesser or for which a



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1 special use permit is granted pursuant to section 205-
2 6; provided that this use shall not be permitted on
3 lands with soil classified by the land study bureau's
4 detailed land classification as overall (master)
5 productivity rating class A unless the solar energy
6 facilities are:

7 (A) Located on a paved or unpaved road in existence
8 as of December 31, 2013, and the parcel of land
9 upon which the paved or unpaved road is located
10 has a valid county agriculture tax dedication
11 status or a valid agricultural conservation
12 easement;

13 (B) Placed in a manner that still allows vehicular
14 traffic to use the road; and

15 (C) Granted a special use permit by the commission
16 pursuant to section 205-6;

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



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- 1 (A) The area occupied by the solar energy facilities
2 is also made available for compatible
3 agricultural activities at a lease rate that is
4 at least fifty per cent below the fair market
5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
7 facility is provided to the satisfaction of the
8 appropriate county planning commission prior to
9 date of commencement of commercial generation;
10 and
- 11 (C) Solar energy facilities shall be decommissioned
12 at the owner's expense according to the following
13 requirements:
- 14 (i) Removal of all equipment related to the
15 solar energy facility within twelve months
16 of the conclusion of operation or useful
17 life; and
- 18 (ii) Restoration of the disturbed earth to
19 substantially the same physical condition as
20 existed prior to the development of the
21 solar energy facility.



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

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;
6 or

7 (23) Hydroelectric facilities, including the appurtenances
8 associated with the production and transmission of
9 hydroelectric energy, subject to section 205-2;
10 provided that the hydroelectric facilities and their
11 appurtenances:

12 (A) [~~Have a hydroelectric generating capacity of not~~
13 ~~more than five hundred kilowatts;~~] Shall consist
14 of a small hydropower facility as defined by the
15 United States Department of Energy, including

16 (i) Impoundment facilities using a dam to store
17 water in a reservoir;

18 (ii) A diversion or run-of-river facility which
19 channels a portion of a river through a
20 canal or channel; and



1 (iii) Pumped storage facilities that store energy
 2 by pumping water uphill to a reservoir at
 3 higher elevation from a reservoir at a lower
 4 elevation to be released to turn a turbine
 5 to generate electricity;

6 (B) Comply with the state water code, chapter 174C;
 7 and

8 ~~[(C) Are accessory to agricultural activities on~~
 9 ~~agricultural land for agricultural use only; and~~

10 ~~(D)]~~ (C) Do not adversely impact or impede the use of
 11 agricultural land or the availability of surface
 12 or ground water for all uses on all parcels that
 13 are served by the ground water sources or streams
 14 for which hydroelectric facilities are
 15 considered."

16 SECTION 4. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval;
 19 provided that the amendments made to section 205-4.5(a)(23),
 20 Hawaii Revised Statutes, by section 3 of this Act shall not be
 21 repealed when section 205-4.5, Hawaii Revised Statutes, is



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1 reenacted on June 30, 2019, pursuant to section 3 of Act 52,
2 Session Laws of Hawaii 2014.
3

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JAN 22 2016



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Report Title:

Small Hydropower Facilities; Agricultural District Lands

Description:

Permits hydroelectric facilities on Agricultural District lands that are considered small hydropower facilities under federal law.

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