
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 agricultural
4 districts may include hydroelectric facilities
5 permitted under section 205-4.5(a)(23), whether or not
6 the hydroelectric facility is a bona fide agricultural
7 service or use that supports the agricultural
8 activities of the fee or leasehold owner of the
9 property and is accessory to any of the above
10 activities;
- 11 (8) Wind machines and wind farms;
- 12 (9) Small-scale meteorological, air quality, noise, and
13 other scientific and environmental data collection and
14 monitoring facilities occupying less than one-half
15 acre of land; provided that these facilities shall not
16 be used as or equipped for use as living quarters or
17 dwellings;
- 18 (10) Agricultural parks;
- 19 (11) Agricultural tourism conducted on a working farm, or a
20 farming operation as defined in section 165-2, for the
21 enjoyment, education, or involvement of visitors;



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

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

19 (13) Open area recreational facilities;



- 1 (14) Geothermal resources exploration and geothermal
- 2 resources development, as defined under section 182-1;
- 3 and
- 4 (15) Agricultural-based commercial operations, including:
- 5 (A) A roadside stand that is not an enclosed
- 6 structure, owned and operated by a producer for
- 7 the display and sale of agricultural products
- 8 grown in Hawaii and value-added products that
- 9 were produced using agricultural products grown
- 10 in Hawaii;
- 11 (B) Retail activities in an enclosed structure owned
- 12 and operated by a producer for the display and
- 13 sale of agricultural products grown in Hawaii,
- 14 value-added products that were produced using
- 15 agricultural products grown in Hawaii, logo items
- 16 related to the producer's agricultural
- 17 operations, and other food items; and
- 18 (C) A retail food establishment owned and operated by
- 19 a producer and permitted under title 11, chapter
- 20 12 of the rules of the department of health that
- 21 prepares and serves food at retail using products



1 grown in Hawaii and value-added products that
2 were produced using agricultural products grown
3 in Hawaii.

4 The owner of an agricultural-based commercial
5 operation shall certify, upon request of an officer or
6 agent charged with enforcement of this chapter under
7 section 205-12, that the agricultural products
8 displayed or sold by the operation meet the
9 requirements of this paragraph.

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

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

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

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



- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. "Farm dwelling", as used in this
11 paragraph, means a single-family dwelling located on
12 and used in connection with a farm, including clusters
13 of single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and
4 roadways, transformer stations, communications
5 equipment buildings, solid waste transfer stations,
6 major water storage tanks, and appurtenant small
7 buildings such as booster pumping stations, but not
8 including offices or yards for equipment, material,
9 vehicle storage, repair or maintenance, treatment
10 plants, corporation yards, or other similar
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement
13 of buildings or sites of historic or scenic interest;
- 14 (9) Agricultural-based commercial operations as described
15 in section 205-2(d)(15);
- 16 (10) Buildings and uses, including mills, storage, and
17 processing facilities, maintenance facilities,
18 photovoltaic, biogas, and other small-scale renewable
19 energy systems producing energy solely for use in the
20 agricultural activities of the fee or leasehold owner
21 of the property, and vehicle and equipment storage



1 areas that are normally considered directly accessory
2 to the above-mentioned uses and are permitted under
3 section 205-2(d);

4 (11) Agricultural parks;

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

15 (A) The employee housing is occupied by employees or
16 former employees of the plantation who have a
17 property interest in the land;

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



- 1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;
- 4 (13) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5;
- 14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (15) Wind energy facilities, including the appurtenances
5 associated with the production and transmission of
6 wind generated energy; provided that the wind energy
7 facilities and appurtenances are compatible with
8 agriculture uses and cause minimal adverse impact on
9 agricultural land;

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

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for economic
21 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.



1 As used in this paragraph:

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

4 "Agricultural-energy enterprise" means an
5 enterprise that integrally incorporates an
6 agricultural activity with an agricultural-energy
7 facility.

8 "Agricultural-energy facility" means a facility
9 that generates, stores, or distributes renewable
10 energy as defined in section 269-91 or renewable fuel
11 including electrical or thermal energy or liquid or
12 gaseous fuels from products of agricultural activities
13 from agricultural lands located in the State.

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for the economic
16 commercial generation, storage, distribution, and
17 other similar handling of energy, including equipment,
18 feedstock, fuels, and other products of agricultural-
19 energy facilities;

20 (18) Construction and operation of wireless communication
21 antennas; provided that, for the purposes of this



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

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



1 conducted on a farming operation as defined in section
2 165-2;

3 (20) Solar energy facilities that do not occupy more than
4 ten per cent of the acreage of the parcel, or twenty
5 acres of land, whichever is lesser or for which a
6 special use permit is granted pursuant to section 205-
7 6; provided that this use shall not be permitted on
8 lands with soil classified by the land study bureau's
9 detailed land classification as overall (master)
10 productivity rating class A unless the solar energy
11 facilities are:

12 (A) Located on a paved or unpaved road in existence
13 as of December 31, 2013, and the parcel of land
14 upon which the paved or unpaved road is located
15 has a valid county agriculture tax dedication
16 status or a valid agricultural conservation
17 easement;

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

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



- 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



1 of the conclusion of operation or useful
2 life; and
3 (ii) Restoration of the disturbed earth to
4 substantially the same physical condition as
5 existed prior to the development of the
6 solar energy facility.

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

10 (22) Geothermal resources exploration and geothermal
11 resources development, as defined under section 182-1;
12 or

13 (23) Hydroelectric facilities, including the appurtenances
14 associated with the production and transmission of
15 hydroelectric energy, subject to section 205-2;
16 provided that the hydroelectric facilities and their
17 appurtenances:

18 (A) [~~Have a hydroelectric generating capacity of not~~
19 ~~more than five hundred kilowatts;~~] Shall consist
20 of a small hydropower facility as defined by the
21 United States Department of Energy, including:



- 1 (i) Impoundment facilities using a dam to store
2 water in a reservoir;
- 3 (ii) A diversion or run-of-river facility which
4 channels a portion of a river through a
5 canal or channel; and
- 6 (iii) Pumped storage facilities that store energy
7 by pumping water uphill to a reservoir at
8 higher elevation from a reservoir at a lower
9 elevation to be released to turn a turbine
10 to generate electricity;
- 11 (B) Comply with the state water code, chapter 174C;
- 12 (C) ~~[Are accessory to agricultural activities on~~
13 ~~agricultural land for agricultural use only; and]~~
14 Shall, if over five hundred kilowatts in
15 hydroelectric generating capacity, have the
16 approval of the commission on water resource
17 management, including a new instream flow
18 standard established for the hydroelectric
19 facility in question;
- 20 (D) Do not adversely impact or impede the use of
21 agricultural land or the availability of surface



1 or ground water for all uses on all parcels that
2 are served by the ground water sources or streams
3 for which hydroelectric facilities are
4 considered[-]; and

5 (E) Shall only wheel to non-contiguous sites that
6 have bona fide agricultural activities, as
7 defined in paragraph 205-2(12)."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 2112;
11 provided that the amendments made to section 205-4.5(a)(23),
12 Hawaii Revised Statutes, by section 3 of this Act shall not be
13 repealed when section 205-4.5, Hawaii Revised Statutes, is
14 reenacted on June 30, 2019, pursuant to section 3 of Act 52,
15 Session Laws of Hawaii 2014.



Report Title:

Small Hydropower Facilities; Agricultural District Lands

Description:

Permits hydroelectric facilities that are considered small hydropower facilities under federal law on Agricultural District lands. (HB2077 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

