

JAN 27 2016

---

---

# 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.



# S.B. NO. 3088

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



# S.B. NO. 3088

- 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~~



## S.B. NO. 3088

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



# S.B. NO. 3088

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



# S.B. NO. 3088

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



# S.B. NO. 3088

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;



# S.B. NO. 3088

- 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



# S.B. NO. 3088

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



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



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:





# S.B. NO. 3088

- 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.



# S.B. NO. 308B

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



# S.B. NO. 3088

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

3

INTRODUCED BY:

Mike Gahbauer

Scott E. Page

Francine L. Inoué

Matt L.

Gregory de Bebe

Frances Ann Oshiro

Clarence K. Kishihara

James M. Mendenhall



# S.B. NO. 3088

**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.

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

