
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Section 208, Hawaiian Homes Commission Act,
2 1920, as amended, is amended to read as follows:

3 "**§208. Conditions of leases.** Each lease made under the
4 authority granted the department by section 207 of this Act, and
5 the tract in respect to which the lease is made, shall be deemed
6 subject to the following conditions, whether or not stipulated
7 in the lease:

8 (1) The original lessee shall be a native Hawaiian, not
9 less than eighteen years of age. In case two lessees
10 either original or in succession marry, they shall
11 choose the lease to be retained, and the remaining
12 lease shall be transferred, quitclaimed, or canceled
13 in accordance with the provisions of succeeding
14 sections.

15 (2) The lessee shall pay a rental of \$1 a year for the
16 tract and the lease shall be for a term of ninety-nine
17 years; except that the department may extend the term



1 of any lease; provided that the approval of any
2 extension shall be subject to the condition that the
3 aggregate of the initial ninety-nine year term and any
4 extension granted shall not be for more than one
5 hundred ninety-nine years.

6 (3) The lessee may be required to occupy and commence to
7 use or cultivate the tract as the lessee's home or
8 farm or occupy and commence to use the tract for
9 aquaculture purposes, as the case may be, within one
10 year after the commencement of the term of the lease.

11 (4) The lessee thereafter, for at least such part of each
12 year as the department shall prescribe by rules, shall
13 occupy and use or cultivate the tract on the lessee's
14 own behalf.

15 (5) The lessee shall not in any manner transfer to, or
16 otherwise hold for the benefit of, any other person or
17 group of persons or organizations of any kind, except
18 a native Hawaiian or Hawaiians, and then only upon the
19 approval of the department, or agree so to transfer,
20 or otherwise hold, the lessee's interest in the tract;
21 except that the lessee, with the approval of the



1 department, also may transfer the lessee's interest in
2 the tract to the following qualified relatives of the
3 lessee who are at least one-quarter Hawaiian: husband,
4 wife, child, or grandchild. A lessee who is at least
5 one-quarter Hawaiian who has received an interest in
6 the tract through succession or transfer may, with the
7 approval of the department, transfer the lessee's
8 leasehold interest to a brother or sister who is at
9 least one-quarter Hawaiian. Such interest shall not,
10 except in pursuance of such a transfer to or holding
11 for or agreement with a native Hawaiian or Hawaiians
12 or qualified relative who is at least one-quarter
13 Hawaiian approved of by the department or for any
14 indebtedness due the department or for taxes or for
15 any other indebtedness the payment of which has been
16 assured by the department, including loans from other
17 agencies where such loans have been approved by the
18 department, be subject to attachment, levy, or sale
19 upon court process. The lessee shall not sublet the
20 lessee's interest in the tract or improvements
21 thereon; provided that a lessee may be permitted, with



1 the approval of the department, to rent to a native
2 Hawaiian or Hawaiians, lodging either within the
3 lessee's existing home or in a separate residential
4 dwelling unit constructed on the premises.

5 (6) Notwithstanding the provisions of paragraph (5), the
6 lessee, with the consent and approval of the
7 commission, may mortgage or pledge the lessee's
8 interest in the tract or improvements thereon to a
9 recognized lending institution authorized to do
10 business as a lending institution in either the State
11 or elsewhere in the United States; provided the loan
12 secured by a mortgage on the lessee's leasehold
13 interest is insured or guaranteed by the Federal
14 Housing Administration, Department of Veterans
15 Affairs, or any other federal agency and their
16 respective successors and assigns, which are
17 authorized to insure or guarantee such loans, or any
18 acceptable private mortgage insurance as approved by
19 the commission. The mortgagee's interest in any such
20 mortgage shall be freely assignable. Such mortgages,



1 to be effective, must be consented to and approved by
2 the commission and recorded with the department.

3 Further, notwithstanding the authorized purposes
4 of loan limitations imposed under section 214 of this
5 Act and the authorized loan amount limitations imposed
6 under section 215 of this Act, loans made by lending
7 institutions as provided in this paragraph, insured or
8 guaranteed by the Federal Housing Administration,
9 Department of Veterans Affairs, or any other federal
10 agency and their respective successors and assigns, or
11 any acceptable private mortgage insurance, may be for
12 such purposes and in such amounts, not to exceed the
13 maximum insurable limits, together with such
14 assistance payments and other fees, as established
15 under section 421 of the Housing and Urban Rural
16 Recovery Act of 1983 which amended Title II of the
17 National Housing Act of 1934 by adding section 247,
18 and its implementing regulations, to permit the
19 Secretary of Housing and Urban Development to insure
20 loans secured by a mortgage executed by the homestead
21 lessee covering a homestead lease issued under section



1 207(a) of this Act and upon which there is located a
2 one to four family single family residence.

3 (7) The lessee shall not install or operate, or permit the
4 installation or operation of a windmill, wind turbine,
5 or other wind energy device that converts wind to
6 electrical energy on that tract.

7 ~~[(7)]~~ (8) The lessee shall pay all taxes assessed upon the
8 tract and improvements thereon. The department may
9 pay such taxes and have a lien therefor as provided by
10 section 216 of this Act.

11 ~~[(8)]~~ (9) The lessee shall perform such other conditions,
12 not in conflict with any provision of this Act, as the
13 department may stipulate in the lease; provided that
14 an original lessee shall be exempt from all taxes for
15 the first seven years after commencement of the term
16 of the lease."

17 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Within the agricultural district, all lands with soil
20 classified by the land study bureau's detailed land
21 classification as overall (master) productivity rating class A



1 or B and for solar energy facilities, class B or C, shall be
2 restricted to the following permitted uses:

3 (1) Cultivation of crops, including crops for bioenergy,
4 flowers, vegetables, foliage, fruits, forage, and
5 timber;

6 (2) Game and fish propagation;

7 (3) Raising of livestock, including poultry, bees, fish,
8 or other animal or aquatic life that are propagated
9 for economic or personal use;

10 (4) Farm dwellings, employee housing, farm buildings, or
11 activities or uses related to farming and animal
12 husbandry. "Farm dwelling", as used in this
13 paragraph, means a single-family dwelling located on
14 and used in connection with a farm, including clusters
15 of single-family farm dwellings permitted within
16 agricultural parks developed by the State, or where
17 agricultural activity provides income to the family
18 occupying the dwelling;

19 (5) Public institutions and buildings that are necessary
20 for agricultural practices;



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



1 energy systems producing energy solely for use in the
2 agricultural activities of the fee or leasehold owner
3 of the property, and vehicle and equipment storage
4 areas that are normally considered directly accessory
5 to the above-mentioned uses and are permitted under
6 section 205-2(d);

7 (11) Agricultural parks;

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

18 (A) The employee housing is occupied by employees or
19 former employees of the plantation who have a
20 property interest in the land;



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

4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;

7 (13) Agricultural tourism conducted on a working farm, or a
8 farming operation as defined in section 165-2, for the
9 enjoyment, education, or involvement of visitors;
10 provided that the agricultural tourism activity is
11 accessory and secondary to the principal agricultural
12 use and does not interfere with surrounding farm
13 operations; and provided further that this paragraph
14 shall apply only to a county that has adopted
15 ordinances regulating agricultural tourism under
16 section 205-5;

17 (14) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

7 (15) Wind energy facilities, including the appurtenances
8 associated with the production and transmission of
9 wind generated energy; provided that the wind energy
10 facilities and appurtenances are compatible with
11 agriculture uses and cause minimal adverse impact on
12 agricultural land; provided further that any wind
13 energy facility that utilizes wind turbine generators
14 and that has the capacity to generate one megawatt or
15 more shall be located not less than fifteen miles from
16 any Hawaiian home lands in existence at the time of
17 the application for necessary permits, measured from
18 the center of the nearest wind turbine generator to
19 the nearest tract of Hawaiian home lands;

20 (16) Biofuel processing facilities, including the
21 appurtenances associated with the production and



1 refining of biofuels that is normally considered
2 directly accessory and secondary to the growing of the
3 energy feedstock; provided that biofuel processing
4 facilities and appurtenances do not adversely impact
5 agricultural land and other agricultural uses in the
6 vicinity.

7 For the purposes of this paragraph:

8 "Appurtenances" means operational infrastructure
9 of the appropriate type and scale for economic
10 commercial storage and distribution, and other similar
11 handling of feedstock, fuels, and other products of
12 biofuel processing facilities.

13 "Biofuel processing facility" means a facility
14 that produces liquid or gaseous fuels from organic
15 sources such as biomass crops, agricultural residues,
16 and oil crops, including palm, canola, soybean, and
17 waste cooking oils; grease; food wastes; and animal
18 residues and wastes that can be used to generate
19 energy;

20 (17) Agricultural-energy facilities, including
21 appurtenances necessary for an agricultural-energy



1 enterprise; provided that the primary activity of the
2 agricultural-energy enterprise is agricultural
3 activity. To be considered the primary activity of an
4 agricultural-energy enterprise, the total acreage
5 devoted to agricultural activity shall be not less
6 than ninety per cent of the total acreage of the
7 agricultural-energy enterprise. The agricultural-
8 energy facility shall be limited to lands owned,
9 leased, licensed, or operated by the entity conducting
10 the agricultural activity.

11 As used in this paragraph:

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

14 "Agricultural-energy enterprise" means an
15 enterprise that integrally incorporates an
16 agricultural activity with an agricultural-energy
17 facility.

18 "Agricultural-energy facility" means a facility
19 that generates, stores, or distributes renewable
20 energy as defined in section 269-91 or renewable fuel
21 including electrical or thermal energy or liquid or



1 gaseous fuels from products of agricultural activities
2 from agricultural lands located in the State.

3 "Appurtenances" means operational infrastructure
4 of the appropriate type and scale for the economic
5 commercial generation, storage, distribution, and
6 other similar handling of energy, including equipment,
7 feedstock, fuels, and other products of agricultural-
8 energy facilities;

9 (18) Construction and operation of wireless communication
10 antennas, including small wireless facilities;
11 provided that, for the purposes of this paragraph,
12 "wireless communication antenna" means communications
13 equipment that is either freestanding or placed upon
14 or attached to an already existing structure and that
15 transmits and receives electromagnetic radio signals
16 used in the provision of all types of wireless
17 communications services; provided further that "small
18 wireless facilities" shall have the same meaning as in
19 section 206N-2; provided further that nothing in this
20 paragraph shall be construed to permit the



1 construction of any new structure that is not deemed a
2 permitted use under this subsection;

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

16 (20) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser or for which a
19 special use permit is granted pursuant to section
20 205-6; provided that this use shall not be permitted
21 on lands with soil classified by the land study



1 bureau's detailed land classification as overall
2 (master) productivity rating class A;
3 (21) Solar energy facilities on lands with soil classified
4 by the land study bureau's detailed land
5 classification as overall (master) productivity rating
6 B or C for which a special use permit is granted
7 pursuant to section 205-6; provided that:

8 (A) The area occupied by the solar energy facilities
9 is also made available for compatible
10 agricultural activities at a lease rate that is
11 at least fifty per cent below the fair market
12 rent for comparable properties;

13 (B) Proof of financial security to decommission the
14 facility is provided to the satisfaction of the
15 appropriate county planning commission prior to
16 date of commencement of commercial generation;
17 and

18 (C) Solar energy facilities shall be decommissioned
19 at the owner's expense according to the following
20 requirements:



1 (i) Removal of all equipment related to the
2 solar energy facility within twelve months
3 of the conclusion of operation or useful
4 life; and

5 (ii) Restoration of the disturbed earth to
6 substantially the same physical condition as
7 existed prior to the development of the
8 solar energy facility.

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

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

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



- 1 (A) Shall consist of a small hydropower facility as
2 defined by the United States Department of
3 Energy, including:
- 4 (i) Impoundment facilities using a dam to store
5 water in a reservoir;
- 6 (ii) A diversion or run-of-river facility that
7 channels a portion of a river through a
8 canal or channel; and
- 9 (iii) Pumped storage facilities that store energy
10 by pumping water uphill to a reservoir at
11 higher elevation from a reservoir at a lower
12 elevation to be released to turn a turbine
13 to generate electricity;
- 14 (B) Comply with the state water code, chapter 174C;
- 15 (C) Shall, if over five hundred kilowatts in
16 hydroelectric generating capacity, have the
17 approval of the commission on water resource
18 management, including a new instream flow
19 standard established for any new hydroelectric
20 facility; and



1 (D) Do not impact or impede the use of agricultural
 2 land or the availability of surface or ground
 3 water for all uses on all parcels that are served
 4 by the ground water sources or streams for which
 5 hydroelectric facilities are considered."

6 SECTION 3. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun before its effective date.

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

11 SECTION 5. This Act shall take effect upon its approval.

12

INTRODUCED BY:

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]

JAN 23 2020



H.B. NO. 2686

Report Title:

HHCA; Department of Hawaiian Home Lands; Department of Agriculture; Agricultural District; Hawaiian Homes Commission Act; Windmills; Ban; Land Use

Description:

Prohibits the installation and operation of windmills on or within 15 miles of any tract leased pursuant to the Hawaiian Homes Commission Act.

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

