
A BILL FOR AN ACT

RELATING TO WIND ENERGY.

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

1 SECTION 1. Chapter 196, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§196-_____ Placement of wind energy facilities, wind
5 machines, and wind farms; restriction. (a) Wind energy
6 facilities, wind machines, and wind farms may be constructed in
7 ocean waters. No wind energy facility, wind machine, or wind
8 farm shall be constructed or located within five miles from any
9 airport or any residential development.

10 (b) As used in this section, "ocean waters" means all
11 waters seaward of the shoreline within the jurisdiction of the
12 State."

13 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

15 "(d) Agricultural districts shall include:



- 1 (1) Activities or uses as characterized by the cultivation
2 of crops, crops for bioenergy, orchards, forage, and
3 forestry;
- 4 (2) Farming activities or uses related to animal husbandry
5 and game and fish propagation;
- 6 (3) Aquaculture, which means the production of aquatic
7 plant and animal life within ponds and other bodies of
8 water;
- 9 (4) Wind-generated energy production for public, private,
10 and commercial use;
- 11 (5) Biofuel production, as described in section
12 205-4.5(a)(16), for public, private, and commercial
13 use;
- 14 (6) Solar energy facilities; provided that:
 - 15 (A) This paragraph shall apply only to land with soil
16 classified by the land study bureau's detailed
17 land classification as overall (master)
18 productivity rating class B, C, D, or E; and
 - 19 (B) Solar energy facilities placed within land with
20 soil classified as overall productivity rating
21 class B or C shall not occupy more than ten per



1 cent of the acreage of the parcel, or twenty
2 acres of land, whichever is lesser, unless a
3 special use permit is granted pursuant to section
4 205-6;

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



- 1 (8) Wind machines and wind farms; provided that no wind
2 machine or wind farm shall be constructed or located
3 within five miles from the boundaries of any airport
4 or any residential development;
- 5 (9) Small-scale meteorological, air quality, noise, and
6 other scientific and environmental data collection and
7 monitoring facilities occupying less than one-half
8 acre of land; provided that these facilities shall not
9 be used as or equipped for use as living quarters or
10 dwellings;
- 11 (10) Agricultural parks;
- 12 (11) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



- 1 (12) Agricultural tourism activities, including overnight
2 accommodations of twenty-one days or less, for any one
3 stay within a county; provided that this paragraph
4 shall apply only to a county that includes at least
5 three islands and has adopted ordinances regulating
6 agricultural tourism activities pursuant to section
7 205-5; provided further that the agricultural tourism
8 activities coexist with a bona fide agricultural
9 activity. For the purposes of this paragraph, "bona
10 fide agricultural activity" means a farming operation
11 as defined in section 165-2;
- 12 (13) Open area recreational facilities;
- 13 (14) Geothermal resources exploration and geothermal
14 resources development, as defined under section 182-1;
- 15 (15) Agricultural-based commercial operations registered in
16 Hawaii, including:
 - 17 (A) A roadside stand that is not an enclosed
18 structure, owned and operated by a producer for
19 the display and sale of agricultural products
20 grown in Hawaii and value-added products that



1 were produced using agricultural products grown
2 in Hawaii;

3 (B) Retail activities in an enclosed structure owned
4 and operated by a producer for the display and
5 sale of agricultural products grown in Hawaii,
6 value-added products that were produced using
7 agricultural products grown in Hawaii, logo items
8 related to the producer's agricultural
9 operations, and other food items;

10 (C) A retail food establishment owned and operated by
11 a producer and permitted under chapter 11-50,
12 Hawaii administrative rules, that prepares and
13 serves food at retail using products grown in
14 Hawaii and value-added products that were
15 produced using agricultural products grown in
16 Hawaii;

17 (D) A farmers' market, which is an outdoor market
18 limited to producers selling agricultural
19 products grown in Hawaii and value-added products
20 that were produced using agricultural products
21 grown in Hawaii; and



1 (E) A food hub, which is a facility that may contain
2 a commercial kitchen and provides for the
3 storage, processing, distribution, and sale of
4 agricultural products grown in Hawaii and value-
5 added products that were produced using
6 agricultural products grown in Hawaii.

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

13 (16) Hydroelectric facilities as described in section
14 205-4.5(a)(23).

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

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

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



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

- 6 (1) Cultivation of crops, including crops for bioenergy,
7 flowers, vegetables, foliage, fruits, forage, and
8 timber;
- 9 (2) Game and fish propagation;
- 10 (3) Raising of livestock, including poultry, bees, fish,
11 or other animal or aquatic life that are propagated
12 for economic or personal use;
- 13 (4) Farm dwellings, employee housing, farm buildings, or
14 activities or uses related to farming and animal
15 husbandry. "Farm dwelling", as used in this
16 paragraph, means a single-family dwelling located on
17 and used in connection with a farm, including clusters
18 of single-family farm dwellings permitted within
19 agricultural parks developed by the State, or where
20 agricultural activity provides income to the family
21 occupying the dwelling;



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



- 1 (10) Buildings and uses, including mills, storage, and
- 2 processing facilities, maintenance facilities,
- 3 photovoltaic, biogas, and other small-scale renewable
- 4 energy systems producing energy solely for use in the
- 5 agricultural activities of the fee or leasehold owner
- 6 of the property, and vehicle and equipment storage
- 7 areas that are normally considered directly accessory
- 8 to the above-mentioned uses and are permitted under
- 9 section 205-2(d);
- 10 (11) Agricultural parks;
- 11 (12) Plantation community subdivisions, which as used in
- 12 this chapter means an established subdivision or
- 13 cluster of employee housing, community buildings, and
- 14 agricultural support buildings on land currently or
- 15 formerly owned, leased, or operated by a sugar or
- 16 pineapple plantation; provided that the existing
- 17 structures may be used or rehabilitated for use, and
- 18 new employee housing and agricultural support
- 19 buildings may be allowed on land within the
- 20 subdivision as follows:



- 1 (A) The employee housing is occupied by employees or
- 2 former employees of the plantation who have a
- 3 property interest in the land;
- 4 (B) The employee housing units not owned by their
- 5 occupants shall be rented or leased at affordable
- 6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be
- 8 rented or leased to agricultural business
- 9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
- 11 farming operation as defined in section 165-2, for the
- 12 enjoyment, education, or involvement of visitors;
- 13 provided that the agricultural tourism activity is
- 14 accessory and secondary to the principal agricultural
- 15 use and does not interfere with surrounding farm
- 16 operations; and provided further that this paragraph
- 17 shall apply only to a county that has adopted
- 18 ordinances regulating agricultural tourism under
- 19 section 205-5;
- 20 (14) Agricultural tourism activities, including overnight
- 21 accommodations of twenty-one days or less, for any one



1 stay within a county; provided that this paragraph
2 shall apply only to a county that includes at least
3 three islands and has adopted ordinances regulating
4 agricultural tourism activities pursuant to section
5 205-5; provided further that the agricultural tourism
6 activities coexist with a bona fide agricultural
7 activity. For the purposes of this paragraph, "bona
8 fide agricultural activity" means a farming operation
9 as defined in section 165-2;

10 (15) Wind energy facilities, including the appurtenances
11 associated with the production and transmission of
12 wind generated energy; provided that the wind energy
13 facilities and appurtenances are compatible with
14 agriculture uses and cause minimal adverse impact on
15 agricultural land; provided further that no wind
16 energy facility shall be constructed or located within
17 five miles from the boundaries of any airport or any
18 residential development;

19 (16) Biofuel processing facilities, including the
20 appurtenances associated with the production and
21 refining of biofuels that is normally considered



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

6 For the purposes of this paragraph:

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

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

19 (17) Agricultural-energy facilities, including
20 appurtenances necessary for an agricultural-energy
21 enterprise; provided that the primary activity of the



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

10 As used in this paragraph:

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

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

17 "Agricultural-energy facility" means a facility
18 that generates, stores, or distributes renewable
19 energy as defined in section 269-91 or renewable fuel
20 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 205-
20 6; provided that this use shall not be permitted on
21 lands with soil classified by the land study bureau's



1 detailed land classification as overall (master)
2 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 4. New statutory material is underscored.

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

8

INTRODUCED BY: Fida Cabonilla Anakawa

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JAN 23 2020



H.B. NO. 2693

Report Title:

Wind Machines; Wind Farms; Wind Energy Facilities; State Ocean Waters; Agricultural Lands; Permitted Use

Description:

Authorizes the construction of wind machines, wind farms, and wind energy facilities in state ocean waters. Prohibits wind machines, wind farms, and wind energy facilities from being constructed or located within five miles from any airport or any residential development.

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

