

JAN 23 2020

A BILL FOR AN ACT

RELATING TO ENERGY PROJECTS NEAR RESIDENTIAL AREAS.

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

1 SECTION 1. The legislature finds that the State is
2 expecting to have more renewable energy projects constructed to
3 meet its one-hundred-percent renewable portfolio standard by
4 2045 to address increasing carbon emissions and curb the climate
5 crisis.

6 The legislature further finds that it is important that the
7 State responsibly designate a safe distance between energy
8 projects, including renewable energy projects, and residential
9 areas to ensure the health and safety of Hawaii's people, as
10 multiple renewable energy projects have received substantial
11 pushback from residents in neighboring communities.

12 The purpose of this Act is to establish a minimum distance
13 of half a mile between utility-scale energy projects and the
14 boundary of residential areas.

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



1 "§196- Placement of utility-scale energy projects;
2 restriction. No utility-scale energy project shall be
3 constructed or located within half a mile from the boundary of
4 any residential area."

5 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§205-2 Districting and classification of lands.** (a)
8 There shall be four major land use districts in which all lands
9 in the State shall be placed: urban, rural, agricultural, and
10 conservation. The land use commission shall group contiguous
11 land areas suitable for inclusion in one of these four major
12 districts. The commission shall set standards for determining
13 the boundaries of each district, provided that:

14 (1) In the establishment of boundaries of urban districts
15 those lands that are now in urban use and a sufficient
16 reserve area for foreseeable urban growth shall be
17 included;

18 (2) In the establishment of boundaries for rural
19 districts, areas of land composed primarily of small
20 farms mixed with very low density residential lots,
21 which may be shown by a minimum density of not more

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1 than one house per one-half acre and a minimum lot
2 size of not less than one-half acre shall be included,
3 except as herein provided;

4 (3) In the establishment of the boundaries of agricultural
5 districts the greatest possible protection shall be
6 given to those lands with a high capacity for
7 intensive cultivation; and

8 (4) In the establishment of the boundaries of conservation
9 districts, the "forest and water reserve zones"
10 provided in Act 234, section 2, Session Laws of Hawaii
11 1957, are renamed "conservation districts" and,
12 effective as of July 11, 1961, the boundaries of the
13 forest and water reserve zones theretofore established
14 pursuant to Act 234, section 2, Session Laws of Hawaii
15 1957, shall constitute the boundaries of the
16 conservation districts; provided that thereafter the
17 power to determine the boundaries of the conservation
18 districts shall be in the commission.

19 In establishing the boundaries of the districts in each county,
20 the commission shall give consideration to the master plan or
21 general plan of the county.



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1 (b) Urban districts shall include activities or uses as
2 provided by ordinances or regulations of the county within which
3 the urban district is situated.

4 In addition, urban districts shall include geothermal
5 resources exploration and geothermal resources development, as
6 defined under section 182-1, as permissible uses.

7 (c) Rural districts shall include activities or uses as
8 characterized by low density residential lots of not more than
9 one dwelling house per one-half acre, except as provided by
10 county ordinance pursuant to section 46-4(c), in areas where
11 "city-like" concentration of people, structures, streets, and
12 urban level of services are absent, and where small farms are
13 intermixed with low density residential lots except that within
14 a subdivision, as defined in section 484-1, the commission for
15 good cause may allow one lot of less than one-half acre, but not
16 less than eighteen thousand five hundred square feet, or an
17 equivalent residential density, within a rural subdivision and
18 permit the construction of one dwelling on such lot; provided
19 that all other dwellings in the subdivision shall have a minimum
20 lot size of one-half acre or 21,780 square feet. Such petition
21 for variance may be processed under the special permit



1 procedure. These districts may include contiguous areas which
2 are not suited to low density residential lots or small farms by
3 reason of topography, soils, and other related characteristics.
4 Rural districts shall also include golf courses, golf driving
5 ranges, and golf-related facilities.

6 In addition to the uses listed in this subsection, rural
7 districts shall include geothermal resources exploration and
8 geothermal resources development, as defined under section
9 182-1, and construction and operation of wireless communication
10 antenna, as defined under section 205-4.5(a)(18), as permissible
11 uses.

12 (d) Agricultural districts shall include:

13 (1) Activities or uses as characterized by the cultivation
14 of crops, crops for bioenergy, orchards, forage, and
15 forestry;

16 (2) Farming activities or uses related to animal husbandry
17 and game and fish propagation;

18 (3) Aquaculture, which means the production of aquatic
19 plant and animal life within ponds and other bodies of
20 water;



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- 1 (4) Wind-generated energy production for public, private,
2 and commercial use;
- 3 (5) Biofuel production, as described in section
4 205-4.5(a)(16), for public, private, and commercial
5 use;
- 6 (6) Solar energy facilities; provided that:
 - 7 (A) This paragraph shall apply only to land with soil
8 classified by the land study bureau's detailed
9 land classification as overall (master)
10 productivity rating class B, C, D, or E; and
 - 11 (B) Solar energy facilities placed within land with
12 soil classified as overall productivity rating
13 class B or C shall not occupy more than ten per
14 cent of the acreage of the parcel, or twenty
15 acres of land, whichever is lesser, unless a
16 special use permit is granted pursuant to section
17 205-6;
- 18 (7) Bona fide agricultural services and uses that support
19 the agricultural activities of the fee or leasehold
20 owner of the property and accessory to any of the
21 above activities, regardless of whether conducted on



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1 the same premises as the agricultural activities to
2 which they are accessory, including farm dwellings as
3 defined in section 205-4.5(a)(4), employee housing,
4 farm buildings, mills, storage facilities, processing
5 facilities, photovoltaic, biogas, and other small-
6 scale renewable energy systems producing energy solely
7 for use in the agricultural activities of the fee or
8 leasehold owner of the property, agricultural-energy
9 facilities as defined in section 205-4.5(a)(17),
10 vehicle and equipment storage areas, and plantation
11 community subdivisions as defined in section
12 205-4.5(a)(12);

13 (8) Wind machines and wind farms;

14 (9) Small-scale meteorological, air quality, noise, and
15 other scientific and environmental data collection and
16 monitoring facilities occupying less than one-half
17 acre of land; provided that these facilities shall not
18 be used as or equipped for use as living quarters or
19 dwellings;

20 (10) Agricultural parks;



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

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



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- 1 (13) Open area recreational facilities;
- 2 (14) Geothermal resources exploration and geothermal
- 3 resources development, as defined under section 182-1;
- 4 (15) Agricultural-based commercial operations registered in
- 5 Hawaii, including:
- 6 (A) A roadside stand that is not an enclosed
- 7 structure, owned and operated by a producer for
- 8 the display and sale of agricultural products
- 9 grown in Hawaii and value-added products that
- 10 were produced using agricultural products grown
- 11 in Hawaii;
- 12 (B) Retail activities in an enclosed structure owned
- 13 and operated by a producer for the display and
- 14 sale of agricultural products grown in Hawaii,
- 15 value-added products that were produced using
- 16 agricultural products grown in Hawaii, logo items
- 17 related to the producer's agricultural
- 18 operations, and other food items;
- 19 (C) A retail food establishment owned and operated by
- 20 a producer and permitted under chapter 11-50,
- 21 Hawaii administrative rules, that prepares and



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1 serves food at retail using products grown in
2 Hawaii and value-added products that were
3 produced using agricultural products grown in
4 Hawaii;

5 (D) A farmers' market, which is an outdoor market
6 limited to producers selling agricultural
7 products grown in Hawaii and value-added products
8 that were produced using agricultural products
9 grown in Hawaii; and

10 (E) A food hub, which is a facility that may contain
11 a commercial kitchen and provides for the
12 storage, processing, distribution, and sale of
13 agricultural products grown in Hawaii and value-
14 added products that were produced using
15 agricultural products grown in Hawaii.

16 The owner of an agricultural-based commercial
17 operation shall certify, upon request of an officer or
18 agent charged with enforcement of this chapter under
19 section 205-12, that the agricultural products
20 displayed or sold by the operation meet the
21 requirements of this paragraph; and



1 (16) Hydroelectric facilities as described in section
2 205-4.5(a)(23).

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

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

8 (e) Conservation districts shall include areas necessary
9 for protecting watersheds and water sources; preserving scenic
10 and historic areas; providing park lands, wilderness, and beach
11 reserves; conserving indigenous or endemic plants, fish, and
12 wildlife, including those which are threatened or endangered;
13 preventing floods and soil erosion; forestry; open space areas
14 whose existing openness, natural condition, or present state of
15 use, if retained, would enhance the present or potential value
16 of abutting or surrounding communities, or would maintain or
17 enhance the conservation of natural or scenic resources; areas
18 of value for recreational purposes; other related activities;
19 and other permitted uses not detrimental to a multiple use
20 conservation concept. Conservation districts shall also include



1 areas for geothermal resources exploration and geothermal
2 resources development, as defined under section 182-1.

3 (f) Notwithstanding any other provision of this section to
4 the contrary, no utility-scale energy project shall be
5 constructed or located within half a mile from the boundary of
6 any residential area."

7 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

- 14 (1) Cultivation of crops, including crops for bioenergy,
15 flowers, vegetables, foliage, fruits, forage, and
16 timber;
- 17 (2) Game and fish propagation;
- 18 (3) Raising of livestock, including poultry, bees, fish,
19 or other animal or aquatic life that are propagated
20 for economic or personal use;



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- 1 (4) Farm dwellings, employee housing, farm buildings, or
2 activities or uses related to farming and animal
3 husbandry. "Farm dwelling", as used in this
4 paragraph, means a single-family dwelling located on
5 and used in connection with a farm, including clusters
6 of single-family farm dwellings permitted within
7 agricultural parks developed by the State, or where
8 agricultural activity provides income to the family
9 occupying the dwelling;
- 10 (5) Public institutions and buildings that are necessary
11 for agricultural practices;
- 12 (6) Public and private open area types of recreational
13 uses, including day camps, picnic grounds, parks, and
14 riding stables, but not including dragstrips,
15 airports, drive-in theaters, golf courses, golf
16 driving ranges, country clubs, and overnight camps;
- 17 (7) Public, private, and quasi-public utility lines and
18 roadways, transformer stations, communications
19 equipment buildings, solid waste transfer stations,
20 major water storage tanks, and appurtenant small
21 buildings such as booster pumping stations, but not



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- 1 including offices or yards for equipment, material,
- 2 vehicle storage, repair or maintenance, treatment
- 3 plants, corporation yards, or other similar
- 4 structures;
- 5 (8) Retention, restoration, rehabilitation, or improvement
- 6 of buildings or sites of historic or scenic interest;
- 7 (9) Agricultural-based commercial operations as described
- 8 in section 205-2(d)(15);
- 9 (10) Buildings and uses, including mills, storage, and
- 10 processing facilities, maintenance facilities,
- 11 photovoltaic, biogas, and other small-scale renewable
- 12 energy systems producing energy solely for use in the
- 13 agricultural activities of the fee or leasehold owner
- 14 of the property, and vehicle and equipment storage
- 15 areas that are normally considered directly accessory
- 16 to the above-mentioned uses and are permitted under
- 17 section 205-2(d);
- 18 (11) Agricultural parks;
- 19 (12) Plantation community subdivisions, which as used in
- 20 this chapter means an established subdivision or
- 21 cluster of employee housing, community buildings, and



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1 agricultural support buildings on land currently or
2 formerly owned, leased, or operated by a sugar or
3 pineapple plantation; provided that the existing
4 structures may be used or rehabilitated for use, and
5 new employee housing and agricultural support
6 buildings may be allowed on land within the
7 subdivision as follows:

8 (A) The employee housing is occupied by employees or
9 former employees of the plantation who have a
10 property interest in the land;

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

14 (C) The agricultural support buildings shall be
15 rented or leased to agricultural business
16 operators or agricultural support services;

17 (13) Agricultural tourism conducted on a working farm, or a
18 farming operation as defined in section 165-2, for the
19 enjoyment, education, or involvement of visitors;
20 provided that the agricultural tourism activity is
21 accessory and secondary to the principal agricultural



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

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

17 (15) Wind energy facilities, including the appurtenances
18 associated with the production and transmission of
19 wind generated energy; provided that the wind energy
20 facilities and appurtenances are compatible with



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

11 For the purposes of this paragraph:

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

17 "Biofuel processing facility" means a facility
18 that produces liquid or gaseous fuels from organic
19 sources such as biomass crops, agricultural residues,
20 and oil crops, including palm, canola, soybean, and
21 waste cooking oils; grease; food wastes; and animal

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

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an
19 enterprise that integrally incorporates an
20 agricultural activity with an agricultural-energy
21 facility.



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

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

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



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1 wireless facilities" shall have the same meaning as in
2 section 206N-2; provided further that nothing in this
3 paragraph shall be construed to permit the
4 construction of any new structure that is not deemed a
5 permitted use under 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 paragraph, "agricultural education programs"
15 means activities or events designed to promote
16 knowledge and understanding of agricultural activities
17 and practices conducted on a farming operation as
18 defined in section 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;

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

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

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



1 (C) Solar energy facilities shall be decommissioned
2 at the owner's expense according to the following
3 requirements:

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

8 (ii) Restoration of the disturbed earth to
9 substantially the same physical condition as
10 existed prior to the development of the
11 solar energy facility.

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

15 (22) Geothermal resources exploration and geothermal
16 resources development, as defined under section 182-1;
17 or

18 (23) Hydroelectric facilities, including the appurtenances
19 associated with the production and transmission of
20 hydroelectric energy, subject to section 205-2;



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1 provided that the hydroelectric facilities and their
2 appurtenances:

3 (A) Shall consist of a small hydropower facility as
4 defined by the United States Department of
5 Energy, including:

6 (i) Impoundment facilities using a dam to store
7 water in a reservoir;

8 (ii) A diversion or run-of-river facility that
9 channels a portion of a river through a
10 canal or channel; and

11 (iii) Pumped storage facilities that store energy
12 by pumping water uphill to a reservoir at
13 higher elevation from a reservoir at a lower
14 elevation to be released to turn a turbine
15 to generate electricity;

16 (B) Comply with the state water code, chapter 174C;

17 (C) Shall, if over five hundred kilowatts in
18 hydroelectric generating capacity, have the
19 approval of the commission on water resource
20 management, including a new instream flow



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1 standard established for any new hydroelectric
 2 facility; and
 3 (D) Do not impact or impede the use of agricultural
 4 land or the availability of surface or ground
 5 water for all uses on all parcels that are served
 6 by the ground water sources or streams for which
 7 hydroelectric facilities are considered.

8 Notwithstanding any other provision of this section to the
 9 contrary, no utility-scale energy project shall be constructed
 10 or located in the agricultural district within half a mile from
 11 the boundary of any residential area."

12 SECTION 5. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval.

15

INTRODUCED BY:





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Report Title:

Energy Projects; State Land Use Districts; Permitted Uses

Description:

Prohibits utility-scale energy projects from being constructed or located within half a mile from the boundary of any residential area.

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

