

JAN 20 2012

S.B. NO. 2289

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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 increases in oil
6 prices, environmental sustainability, economic development, and
7 job creation.

8 The legislature also finds that some of the sites that are
9 targeted for the development of hydroelectric energy-generating
10 facilities in Hawaii are located on agricultural lands.

11 Although various types of renewable energy facilities may be
12 constructed on agricultural lands, hydroelectric facilities may
13 not be constructed on agricultural lands.

14 The purpose of this Act is to allow hydroelectric energy-
15 generating facilities to be constructed on agricultural lands.

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

18 "(d) Agricultural districts shall include:



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

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

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

(4) Wind generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating 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;

- 3 (7) Bona fide agricultural services and uses that support
4 the agricultural activities of the fee or leasehold
5 owner of the property and accessory to any of the
6 above activities, regardless of whether conducted on
7 the same premises as the agricultural activities to
8 which they are accessory, including farm dwellings as
9 defined in section 205-4.5(a)(4), employee housing,
10 farm buildings, mills, storage facilities, processing
11 facilities, agricultural-energy facilities as defined
12 in section 205-4.5(a)(16), vehicle and equipment
13 storage areas, roadside stands for the sale of
14 products grown on the premises, and plantation
15 community subdivisions as defined in section
16 205-4.5(a)(12);
- 17 (8) Wind machines and wind farms;
- 18 (9) Small-scale meteorological, air quality, noise, and
19 other scientific and environmental data collection and
20 monitoring facilities occupying less than one-half
21 acre of land; provided that these facilities shall not



1 be used as or equipped for use as living quarters or
2 dwellings;

3 (10) Agricultural parks;

4 (11) 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; ~~and~~

14 (12) Open area recreational facilities~~[-]~~; and

15 (13) Hydroelectric facilities.

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

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

21 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
22 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 shall be restricted to the following permitted uses:

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

8 (2) Game and fish propagation;

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

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

21 (5) Public institutions and buildings that are necessary
22 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) Roadside stands for the sale of agricultural products
18 grown on the premises;
- 19 (10) Buildings and uses, including mills, storage, and
20 processing facilities, maintenance facilities, and
21 vehicle and equipment storage areas that are normally



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

3 (11) Agricultural parks;

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

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

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

20 (C) The agricultural support buildings shall be
21 rented or leased to agricultural business
22 operators or agricultural support services;



1 (13) 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 (14) Wind energy facilities, including the appurtenances
12 associated with the production and transmission of
13 wind generated energy; provided that the wind energy
14 facilities and appurtenances are compatible with
15 agriculture uses and cause minimal adverse impact on
16 agricultural land;

17 (15) Biofuel processing facilities, including the
18 appurtenances associated with the production and
19 refining of biofuels that is normally considered
20 directly accessory and secondary to the growing of the
21 energy feedstock; provided that biofuels processing
22 facilities and appurtenances do not adversely impact



1 agricultural land and other agricultural uses in the
2 vicinity.

3 For the purposes of this paragraph:

4 "Appurtenances" means operational infrastructure
5 of the appropriate type and scale for economic
6 commercial storage and distribution, and other similar
7 handling of feedstock, fuels, and other products of
8 biofuels processing facilities.

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

16 (16) Agricultural-energy facilities, including
17 appurtenances necessary for an agricultural-energy
18 enterprise; provided that the primary activity of the
19 agricultural-energy enterprise is agricultural
20 activity. To be considered the primary activity of an
21 agricultural-energy enterprise, the total acreage
22 devoted to agricultural activity shall be not less



1 than ninety per cent of the total acreage of the
2 agricultural-energy enterprise. The agricultural-
3 energy facility shall be limited to lands owned,
4 leased, licensed, or operated by the entity conducting
5 the agricultural activity.

6 As used in this paragraph:

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

9 "Agricultural-energy enterprise" means an
10 enterprise that integrally incorporates an
11 agricultural activity with an agricultural-energy
12 facility.

13 "Agricultural-energy facility" means a facility
14 that generates, stores, or distributes renewable
15 energy as defined in section 269-91 or renewable fuel
16 including electrical or thermal energy or liquid or
17 gaseous fuels from products of agricultural activities
18 from agricultural lands located in the State.

19 "Appurtenances" means operational infrastructure
20 of the appropriate type and scale for the economic
21 commercial generation, storage, distribution, and
22 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

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

15 (18) Agricultural education programs conducted on a farming
16 operation as defined in section 165-2, for the
17 education and participation of the general public;
18 provided that the agricultural education programs are
19 accessory and secondary to the principal agricultural
20 use of the parcels or lots on which the agricultural
21 education programs are to occur and do not interfere
22 with surrounding farm operations. For the purposes of



1 this section, "agricultural education programs" means
2 activities or events designed to promote knowledge and
3 understanding of agricultural activities and practices
4 conducted on a farming operation as defined in section
5 165-2; [or]

6 (19) Solar energy facilities that do not occupy more than
7 ten per cent of the acreage of the parcel, or twenty
8 acres of land, whichever is lesser; provided that this
9 use shall not be permitted on lands with soil
10 classified by the land study bureau's detailed land
11 classification as overall (master) productivity rating
12 class A[-]; or

13 (20) Hydroelectric facilities, including the appurtenances
14 associated with the production and transmission of
15 hydroelectric energy; provided that:

16 (A) Hydroelectric facilities and their appurtenances
17 meet and comply with instream flow standards
18 established by the commission on water resource
19 management;

20 (B) Hydroelectric facilities and their appurtenances
21 are not adverse to agricultural uses; and








(C) Construction, operation, and maintenance of a
hydroelectric facility minimize adverse impacts
to agricultural land and interference with the
activities of agricultural users."

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

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

INTRODUCED BY:



S.B. NO. 2289

Report Title:

Renewable Energy; Agricultural Land; Hydroelectric Facilities

Description:

Allows hydroelectric facilities to be constructed on agricultural lands.

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

