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# A BILL FOR AN ACT

RELATING TO SOLAR ENERGY.

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

1           SECTION 1. The purpose of this Act is to enable the  
2 complementary uses of utility scale solar energy generation and  
3 local food production on agricultural land with an overall  
4 productivity rating of class B or C.

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

7           "(d) Agricultural districts shall include:

- 8           (1) Activities or uses as characterized by the cultivation  
9           of crops, crops for bioenergy, orchards, forage, and  
10           forestry;
- 11           (2) Farming activities or uses related to animal husbandry  
12           and game and fish propagation;
- 13           (3) Aquaculture, which means the production of aquatic  
14           plant and animal life within ponds and other bodies of  
15           water;
- 16           (4) Wind generated energy production for public, private,  
17           and commercial use;



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

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

10 (8) Wind machines and wind farms;

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

17 (10) Agricultural parks;

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



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 (12) 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 (13) Open area recreational facilities;

18 [+] (14) [+] Geothermal resources exploration and geothermal  
19 resources development, as defined under section 182-1;  
20 and

21 [+] (15) [+] Agricultural-based commercial operations, including:



- 1 (A) A roadside stand that is not an enclosed  
2 structure, owned and operated by a producer for  
3 the display and sale of agricultural products  
4 grown in Hawaii and value-added products that  
5 were produced using agricultural products grown  
6 in Hawaii;
- 7 (B) Retail activities in an enclosed structure owned  
8 and operated by a producer for the display and  
9 sale of agricultural products grown in Hawaii,  
10 value-added products that were produced using  
11 agricultural products grown in Hawaii, logo items  
12 related to the producer's agricultural  
13 operations, and other food items; and
- 14 (C) A retail food establishment owned and operated by  
15 a producer and permitted under [‡]title 11, [‡]  
16 chapter 12 of the rules of the department of  
17 health that prepares and serves food at retail  
18 using products grown in Hawaii and value-added  
19 products that were produced using agricultural  
20 products grown in Hawaii.

21 The owner of an agricultural-based commercial  
22 operation shall certify, upon request of an officer or



1 agent charged with enforcement of this chapter under  
2 section 205-12, that the agricultural products  
3 displayed or sold by the operation meet the  
4 requirements of this paragraph.

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

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

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

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

- 17 (1) Cultivation of crops, including crops for bioenergy,
- 18 flowers, vegetables, foliage, fruits, forage, and
- 19 timber;
- 20 (2) Game and fish propagation;



- 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  
22 equipment buildings, solid waste transfer stations,



1 major water storage tanks, and appurtenant small  
2 buildings such as booster pumping stations, but not  
3 including offices or yards for equipment, material,  
4 vehicle storage, repair or maintenance, treatment  
5 plants, corporation yards, or other similar  
6 structures;

7 (8) Retention, restoration, rehabilitation, or improvement  
8 of buildings or sites of historic or scenic interest;

9 (9) Agricultural-based commercial operations as described  
10 in section [205-2(d)(15)];

11 (10) Buildings and uses, including mills, storage, and  
12 processing facilities, maintenance facilities,  
13 photovoltaic, biogas, and other small-scale renewable  
14 energy systems producing energy solely for use in the  
15 agricultural activities of the fee or leasehold owner  
16 of the property, and vehicle and equipment storage  
17 areas that are normally considered directly accessory  
18 to the above-mentioned uses and are permitted under  
19 section 205-2(d);

20 (11) Agricultural parks;

21 (12) Plantation community subdivisions, which as used in  
22 this chapter means an established subdivision or





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

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

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

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

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



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  
21 agriculture uses and cause minimal adverse impact on  
22 agricultural land;



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

9                       For the purposes of this paragraph:

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

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



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

13                   As used in this paragraph:

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

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

20                   "Agricultural-energy facility" means a facility  
21                   that generates, stores, or distributes renewable  
22                   energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or  
2 gaseous fuels from products of agricultural activities  
3 from agricultural lands located in the State.

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

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



- 1           (19) Agricultural education programs conducted on a farming  
2           operation as defined in section 165-2, for the  
3           education and participation of the general public;  
4           provided that the agricultural education programs are  
5           accessory and secondary to the principal agricultural  
6           use of the parcels or lots on which the agricultural  
7           education programs are to occur and do not interfere  
8           with surrounding farm operations. For the purposes of  
9           this section, "agricultural education programs" means  
10          activities or events designed to promote knowledge and  
11          understanding of agricultural activities and practices  
12          conducted on a farming operation as defined in section  
13          165-2;
- 14          (20) Solar energy facilities that do not occupy more than  
15          ten per cent of the acreage of the parcel, or twenty  
16          acres of land, whichever is lesser[+] or for which a  
17          special use permit is granted pursuant to section 205-  
18          6; provided that this use shall not be permitted on  
19          lands with soil classified by the land study bureau's  
20          detailed land classification as overall (master)  
21          productivity rating class A; [ø#]



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

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

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

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

19       (i) Removal of all equipment related to the  
20       solar energy facility within twelve months  
21       of the conclusion of operation or useful  
22       life; and



1                   (ii) Restoration of the disturbed earth to  
2                               substantially the same physical condition as  
3                               existed prior to the development of the  
4                               solar energy facility.

5                   For the purposes of this paragraph, "agricultural  
6                               activities" means the activities described in  
7                               paragraphs (1) to (3); or

8                   ~~[(21)]~~ (22) Geothermal resources exploration and geothermal  
9                               resources development, as defined under section  
10                              182-1."

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

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





**Report Title:**

Solar Energy; Agricultural Land

**Description:**

Allows solar energy facilities to occupy no more than 10% of a parcel, or 20 acres of land, within agricultural lands with soil classified as overall productivity rating class B or C if a special use permit has been granted and the area occupied by the solar energy facilities is also made available for compatible agricultural activities. Requires that solar energy facilities be decommissioned and removed within 12 months of the conclusion of operation. (SB2658 HD2)

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