
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~~
- 12 thirty per cent of the acreage of the parcel, or
- 13 twenty acres of land, whichever is lesser~~+~~, or
- 14 in the alternative, of two or more adjacent
- 15 parcels having met the applicable county
- 16 requirements for the joint development or joint
- 17 lot use of those parcels; provided that:
- 18 (i) A special use permit has been granted for
- 19 the solar energy facilities pursuant to
- 20 section 205-6;
- 21 (ii) The area occupied by the solar energy
- 22 facilities is also made available for



1 compatible agricultural activities at a
 2 lease rate that is at least fifty per cent
 3 below the fair market rent for comparable
 4 properties. For the purposes of this
 5 clause, "agricultural activities" means the
 6 activities described in paragraphs (1) to
 7 (3); and

8 (iii) The solar energy facilities shall be
 9 decommissioned and removed within twelve
 10 months of the conclusion of operation;

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



1 facilities as defined in section 205-4.5(a)(17),
2 vehicle and equipment storage areas, and plantation
3 community subdivisions as defined in section
4 205-4.5(a)(12);
5 (8) Wind machines and wind farms;
6 (9) Small-scale meteorological, air quality, noise, and
7 other scientific and environmental data collection and
8 monitoring facilities occupying less than one-half
9 acre of land; provided that these facilities shall not
10 be used as or equipped for use as living quarters or
11 dwellings;
12 (10) Agricultural parks;
13 (11) Agricultural tourism conducted on a working farm, or a
14 farming operation as defined in section 165-2, for the
15 enjoyment, education, or involvement of visitors;
16 provided that the agricultural tourism activity is
17 accessory and secondary to the principal agricultural
18 use and does not interfere with surrounding farm
19 operations; and provided further that this paragraph
20 shall apply only to a county that has adopted
21 ordinances regulating agricultural tourism under
22 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 and

16 [+] (15) [+] Agricultural-based commercial operations, 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
21 were produced using agricultural products grown
22 in Hawaii;



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

8 (C) A retail food establishment owned and operated by
9 a producer and permitted under [†]title 11, [†]
10 chapter 12 of the rules of the department of
11 health that prepares and serves food at retail
12 using products grown in Hawaii and value-added
13 products that were produced using agricultural
14 products grown in Hawaii.

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

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



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

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

6 "(a) Within the agricultural district, all lands with soil
7 classified by the land study bureau's detailed land
8 classification as overall (master) productivity rating class A
9 or B shall be restricted to the following permitted uses:

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



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



- 1 (9) Agricultural-based commercial operations as described
- 2 in section [†]205-2(d)(15)[†];
- 3 (10) Buildings and uses, including mills, storage, and
- 4 processing facilities, maintenance facilities,
- 5 photovoltaic, biogas, and other small-scale renewable
- 6 energy systems producing energy solely for use in the
- 7 agricultural activities of the fee or leasehold owner
- 8 of the property, and vehicle and equipment storage
- 9 areas that are normally considered directly accessory
- 10 to the above-mentioned uses and are permitted under
- 11 section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
- 14 this chapter means an established subdivision or
- 15 cluster of employee housing, community buildings, and
- 16 agricultural support buildings on land currently or
- 17 formerly owned, leased, or operated by a sugar or
- 18 pineapple plantation; provided that the existing
- 19 structures may be used or rehabilitated for use, and
- 20 new employee housing and agricultural support
- 21 buildings may be allowed on land within the
- 22 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
22 stay within a county; provided that this paragraph



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

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

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



1 For the purposes of this paragraph:

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

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

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



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

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

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

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

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,
21 feedstock, fuels, and other products of agricultural-
22 energy facilities;



- 1 (18) Construction and operation of wireless communication
2 antennas; provided that, for the purposes of this
3 paragraph, "wireless communication antenna" means
4 communications equipment that is either freestanding
5 or placed upon or attached to an already existing
6 structure and that transmits and receives
7 electromagnetic radio signals used in the provision of
8 all types of wireless communications services;
9 provided further that nothing in this paragraph shall
10 be construed to permit the construction of any new
11 structure that is not deemed a permitted use under
12 this subsection;
- 13 (19) Agricultural education programs conducted on a farming
14 operation as defined in section 165-2, for the
15 education and participation of the general public;
16 provided that the agricultural education programs are
17 accessory and secondary to the principal agricultural
18 use of the parcels or lots on which the agricultural
19 education programs are to occur and do not interfere
20 with surrounding farm operations. For the purposes of
21 this section, "agricultural education programs" means
22 activities or events designed to promote knowledge and



1 understanding of agricultural activities and practices
2 conducted on a farming operation as defined in section
3 165-2;

4 (20) Solar energy facilities that do not occupy more than
5 ~~[ten]~~ thirty per cent of the acreage of the parcel, or
6 twenty acres of land, whichever is lesser~~[, provided~~
7 ~~that this]~~, or in the alternative, of two or more
8 adjacent parcels having met the applicable county
9 requirements for the joint development or joint lot
10 use of those parcels; provided that:

11 (A) A special use permit has been granted for the
12 solar energy facilities pursuant to section
13 205-6;

14 (B) The area occupied by the solar energy facilities
15 is also made available for compatible
16 agricultural activities at a lease rate that is
17 at least fifty per cent below the fair market
18 rent for comparable properties. For the purposes
19 of this subparagraph, "agricultural activities"
20 means the activities described in paragraphs (1)
21 to (3);



1 (C) The solar energy facilities shall be
2 decommissioned and removed within twelve months
3 of the conclusion of the operation; and

4 (D) This use shall not be permitted on lands with
5 soil classified by the land study bureau's
6 detailed land classification as overall (master)
7 productivity rating class A; or

8 [+] (21) [+] 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
14 and shall be repealed on July 1, 2020; provided that sections
15 205-2(d) and 205-4.5(a), Hawaii Revised Statutes, shall be
16 reenacted in the form in which they read on the day prior to the
17 effective date of this Act.



Report Title:

Solar Energy; Agricultural Land

Description:

Requires a special use permit for solar energy facilities on class B or C land. Requires solar energy facilities placed within land with soil classified as overall productivity rating class B or C to occupy not more than thirty per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, or in the alternative, of two or more adjacent parcels having met the applicable county requirements for the joint development or joint lot use of those parcels. Requires the area occupied by the solar energy facility to also be made available for compatible agricultural activities at a lease rate that is at least fifty per cent below fair market rent for comparable properties. Requires the area occupied by the solar energy facility to also be made available for compatible agricultural activities. Defines "agricultural activities". Requires that solar energy facilities be decommissioned and removed within twelve months of the conclusion of operation. Sunsets on July 1, 2020. (SD3)

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