

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

- 1           SECTION 1. Section 205-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:
- 3           "(d) Agricultural districts shall include:
- 4           (1) Activities or uses as characterized by the cultivation  
5           of crops, crops for bioenergy, orchards, forage, and  
6           forestry;
- 7           (2) Farming activities or uses related to animal husbandry  
8           and game and fish propagation;
- 9           (3) Aquaculture, which means the production of aquatic  
10           plant and animal life within ponds and other bodies of  
11           water;
- 12           (4) Wind generated energy production for public, private,  
13           and commercial use;
- 14           (5) Biofuel production, as described in section  
15           205-4.5(a)(16), for public, private, and commercial  
16           use;
- 17           (6) Solar energy facilities; provided that:



- 1 (A) This paragraph shall apply only to land with soil  
2 classified by the land study bureau's detailed  
3 land classification as overall (master)  
4 productivity rating class B, C, D, or E; and
- 5 (B) Solar energy facilities placed within land with  
6 soil classified as overall productivity rating  
7 class B or C shall not occupy more than ten per  
8 cent of the acreage of the parcel, or twenty  
9 acres of land, whichever is lesser;
- 10 (7) Notwithstanding section 205-4.5 to the contrary, solar  
11 energy facilities placed within land with soil  
12 classified as overall productivity rating class A;  
13 provided that the facilities:
- 14 (A) Shall not occupy more than five per cent of the  
15 acreage of the parcel, or five acres of land,  
16 whichever is lesser;
- 17 (B) Shall not materially interfere with farm  
18 operations; and
- 19 (C) Shall cause no more than a minimal adverse impact  
20 on existing or potential agricultural uses of the  
21 land;



1        [~~7~~] (8) Bona fide agricultural services and uses that  
2                support the agricultural activities of the fee or  
3                leasehold owner of the property and accessory to any  
4                of the above activities, regardless of whether  
5                conducted on the same premises as the agricultural  
6                activities to which they are accessory, including farm  
7                dwellings as defined in section 205-4.5(a)(4),  
8                employee housing, farm buildings, mills, storage  
9                facilities, processing facilities, photovoltaic,  
10              biogas, and other small-scale renewable energy systems  
11              producing energy solely for use in the agricultural  
12              activities of the fee or leasehold owner of the  
13              property, agricultural-energy facilities as defined in  
14              section 205-4.5(a)(17), vehicle and equipment storage  
15              areas, and plantation community subdivisions as  
16              defined in section 205-4.5(a)(12);

17        [~~8~~] (9) Wind machines and wind farms;

18        [~~9~~] (10) Small-scale meteorological, air quality, noise,  
19              and other scientific and environmental data collection  
20              and 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)]~~ (11)   Agricultural parks;  
4       ~~[(11)]~~ (12)   Agricultural tourism conducted on a working  
5           farm, or a farming operation as defined in section  
6           165-2, for the enjoyment, education, or involvement of  
7           visitors; provided that the agricultural tourism  
8           activity is accessory and secondary to the principal  
9           agricultural use and does not interfere with  
10          surrounding farm operations; and provided further that  
11          this paragraph shall apply only to a county that has  
12          adopted ordinances regulating agricultural tourism  
13          under section 205-5;  
14       ~~[(12)]~~ (13)   Agricultural tourism activities, including  
15           overnight accommodations of twenty-one days or less,  
16           for any one stay within a county; provided that this  
17           paragraph shall apply only to a county that includes  
18           at least three islands and has adopted ordinances  
19           regulating agricultural tourism activities pursuant to  
20           section 205-5; provided further that the agricultural  
21           tourism activities coexist with a bona fide  
22           agricultural activity. For the purposes of this



1 paragraph, "bona fide agricultural activity" means a  
2 farming operation as defined in section 165-2;  
3 ~~[(13)]~~ (14) Open area recreational facilities;  
4 ~~[(14)]~~ (15) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;  
6 and  
7 ~~[(15)]~~ (16) Agricultural-based commercial operations,  
8 including:  
9 (A) A roadside stand that is not an enclosed  
10 structure, owned and operated by a producer for  
11 the display and sale of agricultural products  
12 grown in Hawaii and value-added products that  
13 were produced using agricultural products grown  
14 in Hawaii;  
15 (B) Retail activities in an enclosed structure owned  
16 and operated by a producer for the display and  
17 sale of agricultural products grown in Hawaii,  
18 value-added products that were produced using  
19 agricultural products grown in Hawaii, logo items  
20 related to the producer's agricultural  
21 operations, and other food items; and



1 (C) A retail food establishment owned and operated by  
2 a producer and permitted under [H]title 11, [H]  
3 chapter 12 of the rules of the department of  
4 health that prepares and serves food at retail  
5 using products grown in Hawaii and value-added  
6 products that were produced using agricultural  
7 products grown in Hawaii.

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

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

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

19 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) Within the agricultural district, all lands with soil  
22 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating class A  
2 or B shall be restricted to the following permitted uses:

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

6 (2) Game and fish propagation;

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

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

19 (5) Public institutions and buildings that are necessary  
20 for agricultural practices;

21 (6) Public and private open area types of recreational  
22 uses, including day camps, picnic grounds, parks, and



- 1 riding stables, but not including dragstrips,  
2 airports, drive-in theaters, golf courses, golf  
3 driving ranges, country clubs, and overnight camps;
- 4 (7) Public, private, and quasi-public utility lines and  
5 roadways, transformer stations, communications  
6 equipment buildings, solid waste transfer stations,  
7 major water storage tanks, and appurtenant small  
8 buildings such as booster pumping stations, but not  
9 including offices or yards for equipment, material,  
10 vehicle storage, repair or maintenance, treatment  
11 plants, corporation yards, or other similar  
12 structures;
- 13 (8) Retention, restoration, rehabilitation, or improvement  
14 of buildings or sites of historic or scenic interest;
- 15 (9) Agricultural-based commercial operations as described  
16 in section [+]205-2(d)(15)[+];
- 17 (10) Buildings and uses, including mills, storage, and  
18 processing facilities, maintenance facilities,  
19 photovoltaic, biogas, and other small-scale renewable  
20 energy systems producing energy solely for use in the  
21 agricultural activities of the fee or leasehold owner  
22 of the property, and vehicle and equipment storage





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

4 (11) Agricultural parks;

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

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

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



1           (C) The agricultural support buildings shall be  
2                       rented or leased to agricultural business  
3                       operators or agricultural support services;

4       (13) 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;

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



1           fide agricultural activity" means a farming operation  
2           as defined in section 165-2;

3       (15) Wind energy facilities, including the appurtenances  
4           associated with the production and transmission of  
5           wind generated energy; provided that the wind energy  
6           facilities and appurtenances are compatible with  
7           agriculture uses and cause minimal adverse impact on  
8           agricultural land;

9       (16) Biofuel processing facilities, including the  
10          appurtenances associated with the production and  
11          refining of biofuels that is normally considered  
12          directly accessory and secondary to the growing of the  
13          energy feedstock; provided that biofuel processing  
14          facilities and appurtenances do not adversely impact  
15          agricultural land and other agricultural uses in the  
16          vicinity.

17               For the purposes of this paragraph:

18               "Appurtenances" means operational infrastructure  
19               of the appropriate type and scale for economic  
20               commercial storage and distribution, and other similar  
21               handling of feedstock, fuels, and other products of  
22               biofuel processing facilities.



1 "Biofuel processing facility" means a facility  
2 that produces liquid or gaseous fuels from organic  
3 sources such as biomass crops, agricultural residues,  
4 and oil crops, including palm, canola, soybean, and  
5 waste cooking oils; grease; food wastes; and animal  
6 residues and wastes that can be used to generate  
7 energy;

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

20 As used in this paragraph:

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



1 "Agricultural-energy enterprise" means an  
2 enterprise that integrally incorporates an  
3 agricultural activity with an agricultural-energy  
4 facility.

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

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

17 (18) Construction and operation of wireless communication  
18 antennas; provided that, for the purposes of this  
19 paragraph, "wireless communication antenna" means  
20 communications equipment that is either freestanding  
21 or placed upon or attached to an already existing  
22 structure and that transmits and receives



1           electromagnetic radio signals used in the provision of  
2           all types of wireless communications services;  
3           provided further that nothing in this paragraph shall  
4           be construed to permit the construction of any new  
5           structure that is not deemed a permitted use under  
6           this subsection;

7           (19) Agricultural education programs conducted on a farming  
8           operation as defined in section 165-2, for the  
9           education and participation of the general public;  
10          provided that the agricultural education programs are  
11          accessory and secondary to the principal agricultural  
12          use of the parcels or lots on which the agricultural  
13          education programs are to occur and do not interfere  
14          with surrounding farm operations. For the purposes of  
15          this section, "agricultural education programs" means  
16          activities or events designed to promote knowledge and  
17          understanding of agricultural activities and practices  
18          conducted on a farming operation as defined in section  
19          165-2;

20          (20) Solar energy facilities that do not occupy more than  
21          ten per cent of the acreage of the parcel, or twenty  
22          acres of land, whichever is lesser; provided that this



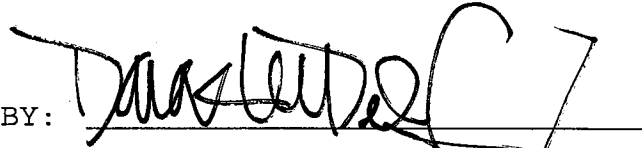
1 use shall not be permitted on lands with soil  
 2 classified by the land study bureau's detailed land  
 3 classification as overall (master) productivity rating  
 4 class A[+] unless the solar energy facilities do not  
 5 materially interfere with farm operations and cause no  
 6 more than a minimal adverse impact on existing or  
 7 potential agricultural uses of the land; or  
 8 [+(21)[+]Geothermal resources exploration and geothermal  
 9 resources development, as defined under section  
 10 182-1."

11 SECTION 3. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY:




Clarence K. ...  
 Michelle ...



# S.B. NO. 2775

**Report Title:**

Solar Energy Facilities; Farm Operations; Land

**Description:**

Prohibits solar energy facilities on agricultural lands from interfering with farm operations and causing more than a minimum adverse impact on the land.

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

