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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. The legislature finds that utility scale solar  
2 development projects contribute to the public welfare because  
3 the entire public, not only those who are able to access and  
4 afford rooftop solar systems, can enjoy the benefits of  
5 renewable solar energy. The legislature also finds that the  
6 ideal location for utility scale solar development projects is  
7 near high voltage electric lines, because this location  
8 minimizes the costs of interconnection and transmission, thereby  
9 providing savings for ratepayers.

10           The purpose of this Act is to authorize the development of  
11 utility scale solar development projects on certain lands.

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

14           "(d) Agricultural districts shall include:

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



- 1           (2) Farming activities or uses related to animal husbandry
- 2                   and game and fish propagation;
- 3           (3) Aquaculture, which means the production of aquatic
- 4                   plant and animal life within ponds and other bodies of
- 5                   water;
- 6           (4) Wind-generated energy production for public, private,
- 7                   and commercial use;
- 8           (5) Biofuel production, as described in section
- 9                   205-4.5(a)(16), for public, private, and commercial
- 10                  use;
- 11          (6) Solar energy facilities; provided that:
- 12                  (A) This paragraph shall apply only to land with soil
- 13                          classified by the land study bureau's detailed
- 14                          land classification as overall (master)
- 15                          productivity rating class A, B, C, D, or E; and
- 16                  (B) Solar energy facilities placed within land with
- 17                          soil classified as overall productivity rating
- 18                          class A, B, or C shall not occupy more than ten
- 19                          per cent of the acreage of the parcel, or twenty
- 20                          acres of land, whichever is lesser, unless a



1                   special use permit is granted pursuant to section  
2                   205-6;

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, photovoltaic, biogas, and other small-  
12          scale renewable energy systems producing energy solely  
13          for use in the agricultural activities of the fee or  
14          leasehold owner of the property, agricultural-energy  
15          facilities as defined in section 205-4.5(a)(17),  
16          vehicle and equipment storage areas, and plantation  
17          community subdivisions as defined in section  
18          205-4.5(a)(12);

19          (8) Wind machines and wind farms;

20          (9) Small-scale meteorological, air quality, noise, and  
21          other scientific and environmental data collection and



1 monitoring facilities occupying less than one-half  
2 acre of land; provided that these facilities shall not  
3 be used as or equipped for use as living quarters or  
4 dwellings;

5 (10) Agricultural parks;

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

16 (12) Agricultural tourism activities, including overnight  
17 accommodations of twenty-one days or less, for any one  
18 stay within a county; provided that this paragraph  
19 shall apply only to a county that includes at least  
20 three islands and has adopted ordinances regulating  
21 agricultural tourism activities pursuant to section



1           205-5; provided further that the agricultural tourism  
2           activities coexist with a bona fide agricultural  
3           activity. For the purposes of this paragraph, "bona  
4           fide agricultural activity" means a farming operation  
5           as defined in section 165-2;

6           (13) Open area recreational facilities;

7           (14) Geothermal resources exploration and geothermal  
8           resources development, as defined under section 182-1;

9           (15) Agricultural-based commercial operations registered in  
10          Hawaii, including:

11          (A) A roadside stand that is not an enclosed  
12             structure, owned and operated by a producer for  
13             the display and sale of agricultural products  
14             grown in Hawaii and value-added products that  
15             were produced using agricultural products grown  
16             in Hawaii;

17          (B) Retail activities in an enclosed structure owned  
18             and operated by a producer for the display and  
19             sale of agricultural products grown in Hawaii,  
20             value-added products that were produced using  
21             agricultural products grown in Hawaii, logo items



- 1 related to the producer's agricultural  
2 operations, and other food items;
- 3 (C) A retail food establishment owned and operated by  
4 a producer and permitted under chapter 11-50,  
5 Hawaii administrative rules, that prepares and  
6 serves food at retail using products grown in  
7 Hawaii and value-added products that were  
8 produced using agricultural products grown in  
9 Hawaii;
- 10 (D) A farmers' market, which is an outdoor market  
11 limited to producers selling agricultural  
12 products grown in Hawaii and value-added products  
13 that were produced using agricultural products  
14 grown in Hawaii; and
- 15 (E) A food hub, which is a facility that may contain  
16 a commercial kitchen and provides for the  
17 storage, processing, distribution, and sale of  
18 agricultural products grown in Hawaii and value-  
19 added products that were produced using  
20 agricultural products grown in Hawaii.



1           The owner of an agricultural-based commercial  
2           operation shall certify, upon request of an officer or  
3           agent charged with enforcement of this chapter under  
4           section 205-12, that the agricultural products  
5           displayed or sold by the operation meet the  
6           requirements of this paragraph; and

7           (16) Hydroelectric facilities as described in section  
8           205-4.5(a)(23).

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

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

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

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



- 1           (1) Cultivation of crops, including crops for bioenergy,  
2           flowers, vegetables, foliage, fruits, forage, and  
3           timber;
- 4           (2) Game and fish propagation;
- 5           (3) Raising of livestock, including poultry, bees, fish,  
6           or other animal or aquatic life that are propagated  
7           for economic or personal use;
- 8           (4) Farm dwellings, employee housing, farm buildings, or  
9           activities or uses related to farming and animal  
10          husbandry. "Farm dwelling", as used in this  
11          paragraph, means a single-family dwelling located on  
12          and used in connection with a farm, including clusters  
13          of single-family farm dwellings permitted within  
14          agricultural parks developed by the State, or where  
15          agricultural activity provides income to the family  
16          occupying the dwelling;
- 17          (5) Public institutions and buildings that are necessary  
18          for agricultural practices;
- 19          (6) Public and private open area types of recreational  
20          uses, including day camps, picnic grounds, parks, and  
21          riding stables, but not including dragstrips,





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



1 activity. For the purposes of this paragraph, "bona  
2 fide agricultural activity" means a farming operation  
3 as defined in section 165-2;

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

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

18 For the purposes of this paragraph:

19 "Appurtenances" means operational infrastructure  
20 of the appropriate type and scale for economic  
21 commercial storage and distribution, and other similar



1 handling of feedstock, fuels, and other products of  
2 biofuel processing facilities.

3 "Biofuel processing facility" means a facility  
4 that produces liquid or gaseous fuels from organic  
5 sources [~~such as~~] including but not limited to biomass  
6 crops, agricultural residues, and oil crops, including  
7 palm, canola, soybean, and waste cooking oils; grease;  
8 food wastes; and animal residues and wastes that can  
9 be used to generate energy;

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



1           As used in this paragraph:

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

4           "Agricultural-energy enterprise" means an  
5 enterprise that integrally incorporates an  
6 agricultural activity with an agricultural-energy  
7 facility.

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

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

20           (18) Construction and operation of wireless communication  
21 antennas, including small wireless facilities;



1 provided that, for the purposes of this paragraph,  
2 "wireless communication antenna" means communications  
3 equipment that is either freestanding or placed upon  
4 or attached to an already existing structure and that  
5 transmits and receives electromagnetic radio signals  
6 used in the provision of all types of wireless  
7 communications services; provided further that "small  
8 wireless facilities" shall have the same meaning as in  
9 section 206N-2; provided further that nothing in this  
10 paragraph shall be construed to permit the  
11 construction of any new structure that is not deemed a  
12 permitted use under 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 paragraph, "agricultural education programs"



1 means activities or events designed to promote  
2 knowledge and understanding of agricultural activities  
3 and practices conducted on a farming operation as  
4 defined in section 165-2;

5 (20) Solar energy facilities that do not occupy more than  
6 ten per cent of the acreage of the parcel, or twenty  
7 acres of land, whichever is lesser or for which a  
8 special use permit is granted pursuant to section 205-  
9 6; provided that this use shall not be permitted on  
10 lands with soil classified by the land study bureau's  
11 detailed land classification as overall (master)  
12 productivity rating class A unless either permitted  
13 pursuant to paragraph (21) or the solar energy  
14 facilities are:

15 (A) Located on a paved or unpaved road in existence  
16 as of December 31, 2013, and the parcel of land  
17 upon which the paved or unpaved road is located  
18 has a valid county agriculture tax dedication  
19 status or a valid agricultural conservation  
20 easement;





- 1 (B) Placed in a manner that still allows vehicular
- 2 traffic to use the road; and
- 3 (C) Granted a special use permit by the commission
- 4 pursuant to section 205-6;
- 5 (21) Solar energy facilities on lands with soil classified
- 6 by the land study bureau's detailed land
- 7 classification as overall (master) productivity rating
- 8 A, B, or C for which a special use permit is granted
- 9 pursuant to section 205-6; provided that:
- 10 (A) The area occupied by the solar energy facilities
- 11 is also made available for compatible
- 12 agricultural activities at a lease rate that is
- 13 at least fifty per cent below the fair market
- 14 rent for comparable properties;
- 15 (B) Proof of financial security to decommission the
- 16 facility is provided to the satisfaction of the
- 17 appropriate county planning commission prior to
- 18 date of commencement of commercial generation;
- 19 [~~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[-]; and

12          (D) For lands with soil classified by the land study  
13          bureau's detailed land classification as overall  
14          (master) productivity rating class A:

15          (i) The area occupied by the solar energy  
16          facilities shall be located within two miles  
17          of a 138kV transmission line existing as of  
18          January 1, 2016;

19          (ii) The area occupied by the solar energy  
20          facilities shall not be used for solar  
21          energy purposes for more than thirty-five



1                   years; provided that the thirty-five year  
2                   period may be extended upon approval by the  
3                   commission prior to expiration of the  
4                   thirty-five year period;  
5            (iii)   The area occupied by the solar energy  
6                   facilities shall not be located on any  
7                   state-owned lands;  
8            (iv)   The operator of the solar energy facilities  
9                   that occupy the area shall provide water  
10                   infrastructure to any service area in which  
11                   agricultural production has been impacted by  
12                   the solar energy facilities;  
13            (v)    The area occupied by the solar energy  
14                   facilities shall be restored to its  
15                   original, pre-use condition prior to its  
16                   disposition; except that any agricultural  
17                   infrastructure in good working condition  
18                   need not be removed; and  
19            (vi)   The commission shall hold public hearings  
20                   regarding the applicable solar energy



1                   facilities prior to construction of the  
 2                   facilities.

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

6                   (22) Geothermal resources exploration and geothermal  
 7                   resources development, as defined under section 182-1;  
 8                   or

9                   (23) Hydroelectric facilities, including the appurtenances  
 10                  associated with the production and transmission of  
 11                  hydroelectric energy, subject to section 205-2;  
 12                  provided that the hydroelectric facilities and their  
 13                  appurtenances:

14                  (A) Shall consist of a small hydropower facility as  
 15                  defined by the United States Department of  
 16                  Energy, including:

17                  (i) Impoundment facilities using a dam to store  
 18                  water in a reservoir;

19                  (ii) A diversion or run-of-river facility that  
 20                  channels a portion of a river through a  
 21                  canal or channel; and



- 1 (iii) Pumped storage facilities that store energy
- 2 by pumping water uphill to a reservoir at
- 3 higher elevation from a reservoir at a lower
- 4 elevation to be released to turn a turbine
- 5 to generate electricity;
- 6 (B) Comply with the state water code, chapter 174C;
- 7 (C) Shall, if over five hundred kilowatts in
- 8 hydroelectric generating capacity, have the
- 9 approval of the commission on water resource
- 10 management, including a new instream flow
- 11 standard established for any new hydroelectric
- 12 facility; and
- 13 (D) Do not impact or impede the use of agricultural
- 14 land or the availability of surface or ground
- 15 water for all uses on all parcels that are served
- 16 by the ground water sources or streams for which
- 17 hydroelectric facilities are considered."

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

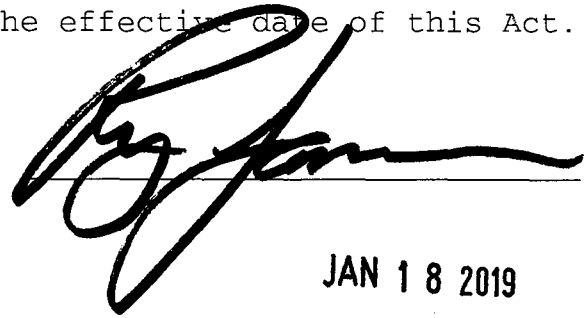
20 SECTION 5. This Act shall take effect upon its approval,  
21 provided that:

# H.B. NO. 593

- 1           (1) The amendments made to section 205-4.5(a), Hawaii
- 2           Revised Statutes, by section 3 of this Act shall not
- 3           be repealed when that section is reenacted on June 30,
- 4           2019, by section 3(1) of Act 52, Session Laws of
- 5           Hawaii 2014; and
- 6           (2) This Act shall be repealed on June 30, 2025, and
- 7           sections 205-2(d) and 205-4.5(a), Hawaii Revised
- 8           Statutes, shall be reenacted in the form in which they
- 9           read on the day before the effective date of this Act.

10

INTRODUCED BY:



A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to be the name of the representative who introduced the bill.

JAN 18 2019



# H.B. NO. 593

**Report Title:**

Land Use; Utility Scale Solar Energy Development Projects;  
Agricultural Districts

**Description:**

Authorizes the development of utility scale solar development projects on certain lands. Effective upon approval and repealed on 6/30/2025.

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

