

JAN 18 2019

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



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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:

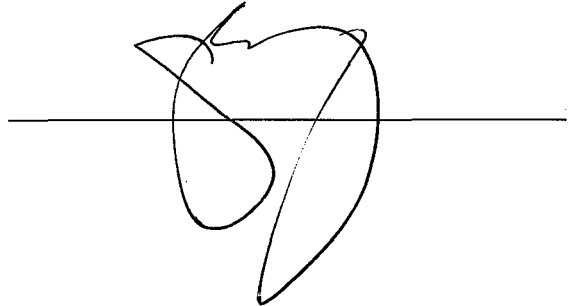


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- 1 (1) The amendments made to section 205-4.5(a), Hawaii
2 Revised Statutes, by section 3 of this Act shall not
3 be repealed when that section is reenacted on June 30,
4 2019, by section 3(1) of Act 52, Session Laws of
5 Hawaii 2014; and
- 6 (2) 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: _____



Clarence K. Iwihiku

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S.B. NO. 1008

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.

