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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; provided that:
- 16 (i) The area occupied by the solar energy
- 17 facilities is also made available for
- 18 compatible agricultural activities at a
- 19 lease rate that is at least fifty per cent
- 20 below the fair market rent for comparable
- 21 properties. For the purposes of this
- 22 subparagraph, "agricultural activities"



1                    means the activities described in paragraphs  
2                    (1) to (3); and

3                    (ii) The solar energy facilities shall be  
4                    decommissioned and removed within twelve  
5                    months of the conclusion of operation;

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

22                   (8) Wind machines and wind farms;



1 (9) Small-scale meteorological, air quality, noise, and  
2 other scientific and environmental data collection and  
3 monitoring facilities occupying less than one-half  
4 acre of land; provided that these facilities shall not  
5 be used as or equipped for use as living quarters or  
6 dwellings;

7 (10) Agricultural parks;

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

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



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

7 (13) Open area recreational facilities;

8 [+](14)[+]Geothermal resources exploration and geothermal  
9 resources development, as defined under section 182-1;  
10 and

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

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

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



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

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

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

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

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

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

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

8           (2) Game and fish propagation;

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

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

21           (5) Public institutions and buildings that are necessary  
22                for agricultural practices;



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



1 agricultural activities of the fee or leasehold owner  
2 of the property, and vehicle and equipment storage  
3 areas that are normally considered directly accessory  
4 to the above-mentioned uses and are permitted under  
5 section 205-2(d);

6 (11) Agricultural parks;

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

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

20 (B) The employee housing units not owned by their  
21 occupants shall be rented or leased at affordable  
22 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,~~] for which a



1 special use permit has been granted pursuant to  
2 section 205-6; provided that [~~this~~]:

3 (A) The area occupied by the solar energy facilities  
4 is also made available for compatible  
5 agricultural activities at a lease rate that is  
6 at least fifty per cent below the fair market  
7 rent for comparable properties. For the purposes  
8 of this subparagraph, "agricultural activities"  
9 means the activities described in paragraphs (1)  
10 to (3);

11 (B) The solar energy facilities shall be  
12 decommissioned and removed within twelve months  
13 of the conclusion of the operation; and

14 (C) This use shall not be permitted on lands with  
15 soil classified by the land study bureau's  
16 detailed land classification as overall (master)  
17 productivity rating class A; or

18 [~~+~~] (21) [~~+~~] Geothermal resources exploration and geothermal  
19 resources development, as defined under section  
20 182-1."

21 SECTION 4. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1           SECTION 5. This Act shall take effect upon its approval  
2 and shall be repealed on July 1, 2020; provided that sections  
3 205-2(d) and 205-4.5(a), Hawaii Revised Statutes, shall be  
4 reenacted in the form in which they read on the day prior to the  
5 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 the area occupied by the solar energy facility is also 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. (SD2)

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