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# A BILL FOR AN ACT

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RELATING TO SOLAR ENERGY.

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

1       SECTION 1. The legislature finds that due to existing  
2 agricultural land use and soil classifications, siting and  
3 installation of utility scale type photovoltaic projects is a  
4 permitted use in a residential subdivision within an  
5 agricultural land-use classification district. The legislature  
6 is aware that industrial-type solar facilities are permitted on  
7 all land in an agricultural district with poor soil. However,  
8 on the island of Hawaii, there are many large residential  
9 subdivisions, also known as "non-conforming subdivisions," that  
10 were created prior to 1980, that do not meet current subdivision  
11 standards. The legislature acknowledges that these non-  
12 conforming subdivisions are not illegal, but created prior to  
13 1980 for speculation purposes with no infrastructure  
14 requirements. Historically, these non-conforming subdivisions  
15 which were created for solely residential purposes remain  
16 designated in the agricultural district.



1       The legislature further finds that while the agricultural  
2 designation may be assumed to mean large tracts of agricultural  
3 farmlands located far from a designated urban or residential  
4 areas, there exist on the island of Hawaii many non-conforming  
5 subdivisions that are residential in nature, yet are designated  
6 as agriculture which allows for certain uses not normally  
7 allowed in designated residential areas. This Act recognizes  
8 that while large, industrial-scale solar installations are very  
9 desirable and essential for Hawaii's future and are ideally  
10 suited for large tracts of agricultural land with poor soil,  
11 these facilities obviously were not intended to be situated  
12 within residential subdivisions without proper permits.

13       The legislature also finds that most households relying on  
14 solar power for standard residential needs require photovoltaic  
15 systems with a nameplate capacity of less than five kilowatts.  
16 The limitation of fifteen kilowatts is far in excess of the  
17 needs for residents of rural communities. This Act is not  
18 intended to inconvenience households that choose to install  
19 large photovoltaics as a renewable source of energy.

20       This Act is not intended to be retroactive and will not  
21 impact existing or currently permitted solar energy facilities.



1       The purpose of this Act is to protect the property values,  
2 health, safety and welfare of people who live in previously  
3 created non-conforming residential subdivisions that  
4 unfortunately, because of their agricultural designation, would  
5 allow an incompatible use without having to go through a special  
6 use permit process to determine impacts to surrounding residents  
7 and the community at large.

8       This Act requires a special permit approval for solar  
9 energy facilities larger than fifteen kilowatts on non-  
10 conforming residential subdivisions located on land with soil  
11 classified with an overall productivity rating of class D or E.

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;  
18       (2) Farming activities or uses related to animal husbandry  
19       and game and fish propagation;



(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind-generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; [and]

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6; and



1        (C) Solar energy facilities placed within land with  
2        soil classified by the land study bureau's  
3        detailed land classification as overall (master)  
4        productivity rating class D or E shall require a  
5        special use permit pursuant to section 205-6 if  
6        the facilities are larger than fifteen kilowatts  
7        and placed on a single lot or multiple lots in a  
8        non-conforming residential subdivision. For  
9        purposes of this subparagraph, "non-conforming  
10       residential subdivision" means a subdivision  
11       located in an agricultural district created prior  
12       to January 1, 1980 for primarily residential  
13       purposes which does not conform to current county  
14       codes and has been identified by each county;

15       (7) Bona fide agricultural services and uses that support  
16       the agricultural activities of the fee or leasehold  
17       owner of the property and accessory to any of the  
18       above activities, regardless of whether conducted on  
19       the same premises as the agricultural activities to  
20       which they are accessory, including farm dwellings as  
21       defined in section 205-4.5(a)(4), employee housing,



1 farm buildings, mills, storage facilities, processing  
2 facilities, photovoltaic, biogas, and other small-  
3 scale renewable energy systems producing energy solely  
4 for use in the agricultural activities of the fee or  
5 leasehold owner of the property, agricultural-energy  
6 facilities as defined in section 205-4.5(a)(17),  
7 vehicle and equipment storage areas, and plantation  
8 community subdivisions as defined in section  
9 205-4.5(a)(12);

10 (8) Wind machines and wind farms;

11 (9) Small-scale meteorological, air quality, noise, and  
12 other scientific and environmental data collection and  
13 monitoring facilities occupying less than one-half  
14 acre of land; provided that these facilities shall not  
15 be used as or equipped for use as living quarters or  
16 dwellings;

17 (10) Agricultural parks;

18 (11) Agricultural tourism conducted on a working farm, or a  
19 farming operation as defined in section 165-2, for the  
20 enjoyment, education, or involvement of visitors;  
21 provided that the agricultural tourism activity is



1           accessory and secondary to the principal agricultural  
2           use and does not interfere with surrounding farm  
3           operations; and provided further that this paragraph  
4           shall apply only to a county that has adopted  
5           ordinances regulating agricultural tourism under  
6           section 205-5;

7           (12) Agricultural tourism activities, including overnight  
8           accommodations of twenty-one days or less, for any one  
9           stay within a county; provided that this paragraph  
10          shall apply only to a county that includes at least  
11          three islands and has adopted ordinances regulating  
12          agricultural tourism activities pursuant to section  
13          205-5; provided further that the agricultural tourism  
14          activities coexist with a bona fide agricultural  
15          activity. For the purposes of this paragraph, "bona  
16          fide agricultural activity" means a farming operation  
17          as defined in section 165-2;

18          (13) Open area recreational facilities;

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



1       (15)   Agricultural-based commercial operations registered in  
2       Hawaii, including:

3       (A)   A roadside stand that is not an enclosed  
4       structure, owned and operated by a producer for  
5       the display and sale of agricultural products  
6       grown in Hawaii and value-added products that  
7       were produced using agricultural products grown  
8       in Hawaii;

9       (B)   Retail activities in an enclosed structure owned  
10      and operated by a producer for the display and  
11      sale of agricultural products grown in Hawaii,  
12      value-added products that were produced using  
13      agricultural products grown in Hawaii, logo items  
14      related to the producer's agricultural  
15      operations, and other food items;

16      (C)   A retail food establishment owned and operated by  
17      a producer and permitted under chapter 11-50,  
18      Hawaii administrative rules, that prepares and  
19      serves food at retail using products grown in  
20      Hawaii and value-added products that were





1 produced using agricultural products grown in  
2 Hawaii;

3 (D) A farmers' market, which is an outdoor market  
4 limited to producers selling agricultural  
5 products grown in Hawaii and value-added products  
6 that were produced using agricultural products  
7 grown in Hawaii; and

8 (E) A food hub, which is a facility that may contain  
9 a commercial kitchen and provides for the  
10 storage, processing, distribution, and sale of  
11 agricultural products grown in Hawaii and value-  
12 added products that were produced using  
13 agricultural products grown in Hawaii.

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

20 (16) Hydroelectric facilities as described in section  
21 205-4.5(a)(23). Agricultural districts shall not



1 include golf courses and golf driving ranges, except  
2 as provided in section 205-4.5(d). Agricultural  
3 districts include areas that are not used for, or that  
4 are not suited to, agricultural and ancillary  
5 activities by reason of topography, soils, and other  
6 related characteristics."

7 SECTION 3. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on January 28, 2045.



**Report Title:**

Solar Energy Facilities; Agricultural District; Special Use Permits

**Description:**

Requires special permit approval for solar energy facilities larger than fifteen kilowatts on one or more lots in non-conforming residential subdivisions, which have been identified by the county, located on land with soil classified with an overall productivity rating of class D or E. (HB2665 HD1)

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

