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# A BILL FOR AN ACT

RELATING TO SOLAR ENERGY FACILITIES.

**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, the siting of  
3 photovoltaic projects resembling a utility scale type  
4 installation can be an outright permitted use within a  
5 residential subdivision within an agricultural land-use  
6 classification district.

7           The legislature further finds that the siting of solar  
8 energy facilities on agricultural classified lands is not the  
9 sole issue, and that this Act is necessary as a result of  
10 multiple and systemic failures regarding Hawaii's land use  
11 classification system and permitting processes, and the  
12 potential misapplication of the Feed-in-Tariff program that may  
13 take advantage of failures and loopholes within and between  
14 various actions. In this regard, some residential subdivisions  
15 developed more than forty years ago should be recognized for  
16 what they are, non-conforming residential subdivisions and not  
17 agricultural lots where state policies have allowed for the



1 installation of large solar energy facilities without review  
2 when compatible with agricultural uses.

3 The purpose of this measure is to require a special permit  
4 approval for solar energy facilities larger than fifteen  
5 kilowatts on single or multiple lots in conforming or non-  
6 conforming residential subdivisions within the agricultural land  
7 use classification district.

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

10 "(d) Agricultural districts shall include:

11 (1) Activities or uses as characterized by the cultivation  
12 of crops, crops for bioenergy, orchards, forage, and  
13 forestry;

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

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

19 (4) Wind generated energy production for public, private,  
20 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; and
- 16 (C) For solar energy facilities placed on single or  
17 multiple lots that:
- 18 (i) Were part of a larger parcel that was  
19 subdivided prior to January 1, 1980, for the  
20 purpose of disposition into two or more  
21 lots, parcels, units, or interests; and



- 1           (ii) Includes any land, whether contiguous or  
2                   non-contiguous, if two or more lots,  
3                   parcels, units, or interests were offered as  
4                   part of a common promotional plan of  
5                   advertising and sale, for permissible  
6                   agricultural uses, including the  
7                   construction of farm dwellings pursuant to  
8                   this section, whether now considered to be a  
9                   conforming or non-conforming residential  
10                  subdivision,  
11                  a special permit approval pursuant to section  
12                  205-6 shall be required when the capacity of a  
13                  solar energy facility totals more than fifteen  
14                  kilowatts;
- 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;

21          (15) Agricultural-based commercial operations, including:



- 1 (A) A roadside stand that is not an enclosed  
2 structure, owned and operated by a producer for  
3 the display and sale of agricultural products  
4 grown in Hawaii and value-added products that  
5 were produced using agricultural products grown  
6 in Hawaii;
- 7 (B) Retail activities in an enclosed structure owned  
8 and operated by a producer for the display and  
9 sale of agricultural products grown in Hawaii,  
10 value-added products that were produced using  
11 agricultural products grown in Hawaii, logo items  
12 related to the producer's agricultural  
13 operations, and other food items; and
- 14 (C) A retail food establishment owned and operated by  
15 a producer and permitted under title 11, chapter  
16 12 of the rules of the department of health that  
17 prepares and serves food at retail using products  
18 grown in Hawaii and value-added products that  
19 were produced using agricultural products grown  
20 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. Statutory material to be repealed is bracketed  
15          and stricken. New statutory material is underscored.

16          SECTION 4. This Act shall take effect on July 31, 2150.



**Report Title:**

Solar Energy Facilities; Agricultural Districts

**Description:**

Requires solar energy facilities with a capacity of more than 15 kW in certain residential housing areas in agricultural districts to obtain a special use permit. (HB788 HD1)

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

