

JAN 24 2018

A BILL FOR AN ACT

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, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 "Non-conforming residential subdivision" means a
16 subdivision located in an agricultural district created prior to
17 January 1, 1980 for primarily residential purposes which does
18 not conform to current county codes."

19 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
20 amended by amending subsection (d) to read as follows:

21 "(d) Agricultural districts shall include:



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



1 cent of the acreage of the parcel, or twenty
2 acres of land, whichever is lesser, unless a
3 special use permit is granted pursuant to section
4 205-6; and

5 (C) Solar energy facilities placed within land with
6 soil classified as overall productivity rating
7 class D or E shall require a special use permit
8 pursuant to section 205-6 if the facilities are
9 larger than fifteen kilowatts and placed on a
10 single lot in a non-conforming residential
11 subdivision as defined in this chapter;

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



1 for use in the agricultural activities of the fee or
2 leasehold owner of the property, agricultural-energy
3 facilities as defined in section 205-4.5(a)(17),
4 vehicle and equipment storage areas, and plantation
5 community subdivisions as defined in section
6 205-4.5(a)(12);

7 (8) Wind machines and wind farms;

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

14 (10) Agricultural parks;

15 (11) Agricultural tourism conducted on a working farm, or a
16 farming operation as defined in section 165-2, for the
17 enjoyment, education, or involvement of visitors;
18 provided that the agricultural tourism activity is
19 accessory and secondary to the principal agricultural
20 use and does not interfere with surrounding farm
21 operations; and provided further that this paragraph



1 shall apply only to a county that has adopted
2 ordinances regulating agricultural tourism under
3 section 205-5;

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

15 (13) Open area recreational facilities;

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

18 (15) Agricultural-based commercial operations registered in
19 Hawaii, including:

20 (A) A roadside stand that is not an enclosed
21 structure, owned and operated by a producer for



1 the display and sale of agricultural products
2 grown in Hawaii and value-added products that
3 were produced using agricultural products grown
4 in Hawaii;

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

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

19 (D) A farmers' market, which is an outdoor market
20 limited to producers selling agricultural
21 products grown in Hawaii and value-added products



1 that were produced using agricultural products
2 grown in Hawaii; and

3 (E) A food hub, which is a facility that may contain
4 a commercial kitchen and provides for the
5 storage, processing, distribution, and sale of
6 agricultural products grown in Hawaii and value-
7 added products that were produced using
8 agricultural products grown in Hawaii.

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

15 (16) Hydroelectric facilities as described in section
16 205-4.5(a)(23). Agricultural districts shall not
17 include golf courses and golf driving ranges, except
18 as provided in section 205-4.5(d). Agricultural
19 districts include areas that are not used for, or that
20 are not suited to, agricultural and ancillary



1 activities by reason of topography, soils, and other
2 related characteristics."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.
9

INTRODUCED BY: _____

John Doe



S.B. NO. 3076

Report Title:

Solar Energy Facilities; Agricultural District; Special Use Permits

Description:

Requires special permit approval for solar energy facilities larger than fifteen kilowatts on non-conforming residential subdivisions located on land with soil classified with an overall productivity rating of class D or E.

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

