

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1           SECTION 1. Chapter 141, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§141-       Solar energy facility; letter of attestation;  
5 authority. The board of agriculture shall have the authority

6 to:

- 7           (1) Issue or not issue a letter of attestation pursuant to  
8           section 269-       ;
- 9           (2) Set conditions for the issuance of a letter of  
10           attestation;
- 11           (3) Refuse to issue a letter of attestation if such  
12           conditions are not accepted;
- 13           (4) Compel compliance of such conditions, including  
14           requesting the assistance of the public utilities  
15           commission, throughout the term of a power purchase  
16           agreement pursuant to section 269-       ; and



1        (5) Require further information from solar energy facility  
2        developers or landowners, as needed."

3        SECTION 2. Chapter 269, Hawaii Revised Statutes, is  
4 amended by adding a new section to part I to be appropriately  
5 designated and to read as follows:

6        **"§269- Power purchase agreements; solar energy**  
7 **facilities; approval.** The public utilities commission shall not  
8 approve a power purchase agreement for a solar energy facility  
9 on lands with soil classified by the land study bureau's  
10 detailed land classification as overall (master) productivity  
11 rating B or C unless the board of agriculture submits a letter  
12 to the commission pursuant to section 141- that attests the  
13 following:

14        (1) That a solar energy facility is the best use of that  
15        particular piece of land to help the State attain its  
16        goals of sustainability;

17        (2) The solar energy facility is not displacing or causing  
18        to be evicted any agricultural operation that has been  
19        active in the past eighteen months;



- 1       (3) The landowner or solar developer is helping new  
2       agricultural operations to be established elsewhere in  
3       the State; and
- 4       (4) The landowner or solar developer is taking steps to  
5       ensure that compatible agriculture coexists with the  
6       solar energy facility from the commencement of  
7       operations of the solar energy facility through the  
8       termination of operations of the solar energy  
9       facility."

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

12       "(a) Within the agricultural district, all lands with soil  
13 classified by the land study bureau's detailed land  
14 classification as overall (master) productivity rating class A  
15 or B and for solar energy facilities, class B or C, shall be  
16 restricted to the following permitted uses:

- 17       (1) Cultivation of crops, including crops for bioenergy,  
18       flowers, vegetables, foliage, fruits, forage, and  
19       timber;
- 20       (2) Game and fish propagation;



- 1           (3) Raising of livestock, including poultry, bees, fish,  
2                   or other animal or aquatic life that are propagated  
3                   for economic or personal use;
- 4           (4) Farm dwellings, employee housing, farm buildings, or  
5                   activities or uses related to farming and animal  
6                   husbandry. "Farm dwelling", as used in this  
7                   paragraph, means a single-family dwelling located on  
8                   and used in connection with a farm, including clusters  
9                   of single-family farm dwellings permitted within  
10                  agricultural parks developed by the State, or where  
11                  agricultural activity provides income to the family  
12                  occupying the dwelling;
- 13          (5) Public institutions and buildings that are necessary  
14                  for agricultural practices;
- 15          (6) Public and private open area types of recreational  
16                  uses, including day camps, picnic grounds, parks, and  
17                  riding stables, but not including dragstrips,  
18                  airports, drive-in theaters, golf courses, golf  
19                  driving ranges, country clubs, and overnight camps;
- 20          (7) Public, private, and quasi-public utility lines and  
21                  roadways, transformer stations, communications



- 1 equipment buildings, solid waste transfer stations,  
2 major water storage tanks, and appurtenant small  
3 buildings such as booster pumping stations, but not  
4 including offices or yards for equipment, material,  
5 vehicle storage, repair or maintenance, treatment  
6 plants, corporation yards, or other similar  
7 structures;
- 8 (8) Retention, restoration, rehabilitation, or improvement  
9 of buildings or sites of historic or scenic interest;
- 10 (9) Agricultural-based commercial operations as described  
11 in section 205-2(d)(15);
- 12 (10) Buildings and uses, including mills, storage, and  
13 processing facilities, maintenance facilities,  
14 photovoltaic, biogas, and other small-scale renewable  
15 energy systems producing energy solely for use in the  
16 agricultural activities of the fee or leasehold owner  
17 of the property, and vehicle and equipment storage  
18 areas that are normally considered directly accessory  
19 to the above-mentioned uses and are permitted under  
20 section 205-2(d);
- 21 (11) Agricultural parks;



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

11                (A) The employee housing is occupied by employees or  
12                    former employees of the plantation who have a  
13                    property interest in the land;

14                (B) The employee housing units not owned by their  
15                    occupants shall be rented or leased at affordable  
16                    rates for agricultural workers; or

17                (C) The agricultural support buildings shall be  
18                    rented or leased to agricultural business  
19                    operators or agricultural support services;

20           (13) Agricultural tourism conducted on a working farm, or a  
21                  farming operation as defined in section 165-2, for the

1           enjoyment, education, or involvement of visitors;  
2           provided that the agricultural tourism activity is  
3           accessory and secondary to the principal agricultural  
4           use and does not interfere with surrounding farm  
5           operations; and provided further that this paragraph  
6           shall apply only to a county that has adopted  
7           ordinances regulating agricultural tourism under  
8           section 205-5;

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

20       (15) Wind energy facilities, including the appurtenances  
21       associated with the production and transmission of



1 wind generated energy; provided that the wind energy  
2 facilities and appurtenances are compatible with  
3 agriculture uses and cause minimal adverse impact on  
4 agricultural land;

5 (16) Biofuel processing facilities, including the  
6 appurtenances associated with the production and  
7 refining of biofuels that is normally considered  
8 directly accessory and secondary to the growing of the  
9 energy feedstock; provided that biofuel processing  
10 facilities and appurtenances do not adversely impact  
11 agricultural land and other agricultural uses in the  
12 vicinity.

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure  
15 of the appropriate type and scale for economic  
16 commercial storage and distribution, and other similar  
17 handling of feedstock, fuels, and other products of  
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility  
20 that produces liquid or gaseous fuels from organic  
21 sources such as biomass crops, agricultural residues,





1 and oil crops, including palm, canola, soybean, and  
2 waste cooking oils; grease; food wastes; and animal  
3 residues and wastes that can be used to generate  
4 energy;

5 (17) Agricultural-energy facilities, including  
6 appurtenances necessary for an agricultural-energy  
7 enterprise; provided that the primary activity of the  
8 agricultural-energy enterprise is agricultural  
9 activity. To be considered the primary activity of an  
10 agricultural-energy enterprise, the total acreage  
11 devoted to agricultural activity shall be not less  
12 than ninety per cent of the total acreage of the  
13 agricultural-energy enterprise. The agricultural-  
14 energy facility shall be limited to lands owned,  
15 leased, licensed, or operated by the entity conducting  
16 the agricultural activity.

17 As used in this paragraph:

18 "Agricultural activity" means any activity  
19 described in paragraphs (1) to (3) of this subsection.

20 "Agricultural-energy enterprise" means an  
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy  
2 facility.

3 "Agricultural-energy facility" means a facility  
4 that generates, stores, or distributes renewable  
5 energy as defined in section 269-91 or renewable fuel  
6 including electrical or thermal energy or liquid or  
7 gaseous fuels from products of agricultural activities  
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure  
10 of the appropriate type and scale for the economic  
11 commercial generation, storage, distribution, and  
12 other similar handling of energy, including equipment,  
13 feedstock, fuels, and other products of agricultural-  
14 energy facilities;

15 (18) Construction and operation of wireless communication  
16 antennas, including small wireless facilities;  
17 provided that, for the purposes of this paragraph,  
18 "wireless communication antenna" means communications  
19 equipment that is either freestanding or placed upon  
20 or attached to an already existing structure and that  
21 transmits and receives electromagnetic radio signals



1 used in the provision of all types of wireless  
2 communications services; provided further that "small  
3 wireless facilities" shall have the same meaning as in  
4 section 206N-2; provided further that nothing in this  
5 paragraph shall be construed to permit the  
6 construction of any new structure that is not deemed a  
7 permitted use under this subsection;

8 (19) Agricultural education programs conducted on a farming  
9 operation as defined in section 165-2, for the  
10 education and participation of the general public;  
11 provided that the agricultural education programs are  
12 accessory and secondary to the principal agricultural  
13 use of the parcels or lots on which the agricultural  
14 education programs are to occur and do not interfere  
15 with surrounding farm operations. For the purposes of  
16 this paragraph, "agricultural education programs"  
17 means activities or events designed to promote  
18 knowledge and understanding of agricultural activities  
19 and practices conducted on a farming operation as  
20 defined in section 165-2;



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- 1           (20) Solar energy facilities that do not occupy more than  
2           ten per cent of the acreage of the parcel, or twenty  
3           acres of land, whichever is lesser or for which a  
4           special use permit is granted pursuant to section 205-  
5           6; provided that this use shall not be permitted on  
6           lands with soil classified by the land study bureau's  
7           detailed land classification as overall (master)  
8           productivity rating class A;
- 9           (21) Solar energy facilities on lands with soil classified  
10          by the land study bureau's detailed land  
11          classification as overall (master) productivity rating  
12          B or C for which a special use permit is granted  
13          pursuant to section 205-6; provided that:
- 14          (A) The entire area occupied by the solar energy  
15          facilities [~~is also made available for~~] shall be  
16          utilized for economically viable compatible  
17          agricultural activities [at a] no later than the  
18          commencement of full operation of the facility;
- 19          (B) The lease rate [that is at least fifty] to the  
20          compatible agricultural activity shall not exceed



1            seventy-five per cent below the fair market rent  
2            for comparable properties;

3            [~~(B)~~] (C) Proof of financial security to decommission  
4            the facility is provided to the satisfaction of  
5            the appropriate county planning commission prior  
6            to date of commencement of commercial generation;  
7            and

8            [~~(C)~~] (D) Solar energy facilities shall be  
9            decommissioned at the owner's expense according  
10           to the following requirements:

11           (i) Removal of all equipment related to the  
12           solar energy facility within twelve months  
13           of the conclusion of operation or useful  
14           life; and

15           (ii) Restoration of the disturbed earth to  
16           substantially the same physical condition as  
17           existed prior to the development of the  
18           solar energy facility.

19           For the purposes of this paragraph, "agricultural  
20           activities" means the activities described in  
21           paragraphs (1) to (3);



- 1 (22) Geothermal resources exploration and geothermal  
2 resources development, as defined under section 182-1;  
3 or  
4 (23) Hydroelectric facilities, including the appurtenances  
5 associated with the production and transmission of  
6 hydroelectric energy, subject to section 205-2;  
7 provided that the hydroelectric facilities and their  
8 appurtenances:  
9 (A) Shall consist of a small hydropower facility as  
10 defined by the United States Department of  
11 Energy, including:  
12 (i) Impoundment facilities using a dam to store  
13 water in a reservoir;  
14 (ii) A diversion or run-of-river facility that  
15 channels a portion of a river through a  
16 canal or channel; and  
17 (iii) Pumped storage facilities that store energy  
18 by pumping water uphill to a reservoir at  
19 higher elevation from a reservoir at a lower  
20 elevation to be released to turn a turbine  
21 to generate electricity;



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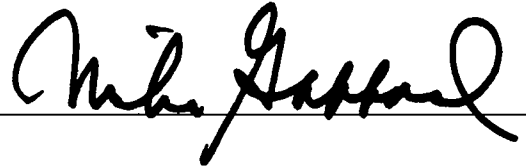
- 1 (B) Comply with the state water code, chapter 174C;
- 2 (C) Shall, if over five hundred kilowatts in
- 3 hydroelectric generating capacity, have the
- 4 approval of the commission on water resource
- 5 management, including a new instream flow
- 6 standard established for any new hydroelectric
- 7 facility; and
- 8 (D) Do not impact or impede the use of agricultural
- 9 land or the availability of surface or ground
- 10 water for all uses on all parcels that are served
- 11 by the ground water sources or streams for which
- 12 hydroelectric facilities are considered."

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

16

INTRODUCED BY:



# S.B. NO. 942

**Report Title:**

Board of Agriculture; Public Utilities Commission; Solar Energy Facility; Letter of Attestation; Power Purchase Agreements

**Description:**

Authorizes the board of agriculture to issue a letter of attestation for solar energy facilities, under certain conditions. Prohibits the public utilities commission from approving a power purchase agreement for a solar energy facility on certain lands without a letter of attestation from the board of agriculture. Clarifies the conditions in which a solar energy facility can operate on class B or C lands.

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

