
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The legislature finds that approximately
2 eighty-five per cent of the State's food is imported. The
3 legislature further finds that without increased production of
4 locally grown foods, the State will grow increasingly vulnerable
5 to natural disasters and other supply-chain disrupting events.
6 The legislature believes that restricting the use of solar
7 energy facilities on certain agricultural lands will facilitate
8 the growth of the State's agricultural industry, increase local
9 food production, and decrease the State's reliance on imported
10 food.

11 Accordingly, the purpose of this measure is to prohibit
12 certain solar energy facilities on lands with soil classified by
13 the land study bureau's detailed land classification as overall
14 (master) productivity rating class B.

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

17 "(d) Agricultural districts shall include:



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- 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-7~~] C, D, or E; and
 - 19 (B) Solar energy facilities placed within land with
20 soil classified as overall productivity rating
21 class [~~B-0x~~] C shall not occupy more than ten per



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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;

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



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- 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



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

8 (13) Open area recreational facilities;

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

11 (15) Agricultural-based commercial operations registered in
12 Hawaii, including:

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

19 (B) Retail activities in an enclosed structure owned
20 and operated by a producer for the display and
21 sale of agricultural products grown in Hawaii,



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1 value-added products that were produced using
2 agricultural products grown in Hawaii, logo items
3 related to the producer's agricultural
4 operations, and other food items;

5 (C) A retail food establishment owned and operated by
6 a producer and permitted under chapter 11-50,
7 Hawaii administrative rules, that prepares and
8 serves food at retail using products grown in
9 Hawaii and value-added products that were
10 produced using agricultural products grown in
11 Hawaii;

12 (D) A farmers' market, which is an outdoor market
13 limited to producers selling agricultural
14 products grown in Hawaii and value-added products
15 that were produced using agricultural products
16 grown in Hawaii; and

17 (E) A food hub, which is a facility that may contain
18 a commercial kitchen and provides for the
19 storage, processing, distribution, and sale of
20 agricultural products grown in Hawaii and value-



1 added products that were produced using
2 agricultural products grown in Hawaii.

3 The owner of an agricultural-based commercial
4 operation shall certify, upon request of an officer or
5 agent charged with enforcement of this chapter under
6 section 205-12, that the agricultural products
7 displayed or sold by the operation meet the
8 requirements of this paragraph; and

9 (16) Hydroelectric facilities as described in section
10 ~~[205-4.5(a)(23)-.]~~ 205-4.5(a)(22).

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

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

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

18 "(a) Within the agricultural district, all lands with soil
19 classified by the land study bureau's detailed land
20 classification as overall (master) productivity rating class A



1 or B and for solar energy facilities, class [~~B-0x~~] C, shall be
2 restricted to the following permitted uses:

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

6 (2) Game and fish propagation;

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

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

19 (5) Public institutions and buildings that are necessary
20 for agricultural practices;



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- 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



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

7 (11) Agricultural parks;

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

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



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

4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;

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

17 (14) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 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 (15) Wind energy facilities, including the appurtenances
8 associated with the production and transmission of
9 wind generated energy; provided that the wind energy
10 facilities and appurtenances are compatible with
11 agriculture uses and cause minimal adverse impact on
12 agricultural land;

13 (16) Biofuel processing facilities, including the
14 appurtenances associated with the production and
15 refining of biofuels that is normally considered
16 directly accessory and secondary to the growing of the
17 energy feedstock; provided that biofuel processing
18 facilities and appurtenances do not adversely impact
19 agricultural land and other agricultural uses in the
20 vicinity.

21 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure
2 of the appropriate type and scale for economic
3 commercial storage and distribution, and other similar
4 handling of feedstock, fuels, and other products of
5 biofuel processing facilities.

6 "Biofuel processing facility" means a facility
7 that produces liquid or gaseous fuels from organic
8 sources such as biomass crops, agricultural residues,
9 and oil crops, including palm, canola, soybean, and
10 waste cooking oils; grease; food wastes; and animal
11 residues and wastes that can be used to generate
12 energy;

13 (17) Agricultural-energy facilities, including
14 appurtenances necessary for an agricultural-energy
15 enterprise; provided that the primary activity of the
16 agricultural-energy enterprise is agricultural
17 activity. To be considered the primary activity of an
18 agricultural-energy enterprise, the total acreage
19 devoted to agricultural activity shall be not less
20 than ninety per cent of the total acreage of the
21 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

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

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

11 "Agricultural-energy facility" means a facility
12 that generates, stores, or distributes renewable
13 energy as defined in section 269-91 or renewable fuel
14 including electrical or thermal energy or liquid or
15 gaseous fuels from products of agricultural activities
16 from agricultural lands located in the State.

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

3 (18) Construction and operation of wireless communication
4 antennas, including small wireless facilities;
5 provided that, for the purposes of this paragraph,
6 "wireless communication antenna" means communications
7 equipment that is either freestanding or placed upon
8 or attached to an already existing structure and that
9 transmits and receives electromagnetic radio signals
10 used in the provision of all types of wireless
11 communications services; provided further that "small
12 wireless facilities" shall have the same meaning as in
13 section 206N-2; provided further that nothing in this
14 paragraph shall be construed to permit the
15 construction of any new structure that is not deemed a
16 permitted use under this subsection;

17 (19) Agricultural education programs conducted on a farming
18 operation as defined in section 165-2, for the
19 education and participation of the general public;
20 provided that the agricultural education programs are
21 accessory and secondary to the principal agricultural



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1 use of the parcels or lots on which the agricultural
 2 education programs are to occur and do not interfere
 3 with surrounding farm operations. For the purposes of
 4 this paragraph, "agricultural education programs"
 5 means activities or events designed to promote
 6 knowledge and understanding of agricultural activities
 7 and practices conducted on a farming operation as
 8 defined in section 165-2;

9 (20) 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 class C that do not occupy more than ten per cent of
 13 the acreage of the parcel, or twenty acres of land,
 14 whichever is lesser or for which a special use permit
 15 is granted pursuant to section 205-6; provided that
 16 [this use], except for those photovoltaic and other
 17 small-scale renewable energy systems described in
 18 paragraph (10), no solar energy facilities shall [not]
 19 be permitted on lands with soil classified by the land
 20 study bureau's detailed land classification as overall
 21 (master) productivity rating class A[+]



1 ~~(21)~~ ~~Solar]~~ or B; provided further that the following shall
2 apply to all solar energy facilities ~~[on lands with~~
3 ~~soil classified by the land study bureau's detailed~~
4 ~~land classification as overall (master) productivity~~
5 ~~rating B or C]~~ for which a special use permit is
6 granted pursuant to section 205-6 ~~[, provided that]:~~

7 (A) The area occupied by the solar energy facilities
8 ~~[is]~~ shall also made available for compatible
9 agricultural activities at a lease rate that is
10 at least fifty per cent below the fair market
11 rent for comparable properties;

12 (B) Proof of financial security to decommission the
13 facility ~~[is]~~ shall be provided to the
14 satisfaction of the appropriate county planning
15 commission prior to date of commencement of
16 commercial generation; and

17 (C) Solar energy facilities shall be decommissioned
18 at the owner's expense according to the following
19 requirements:

20 (i) Removal of all equipment related to the
21 solar energy facility within twelve months



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1 of the conclusion of operation or useful
2 life; and

3 (ii) Restoration of the disturbed earth to
4 substantially the same physical condition as
5 existed prior to the development of the
6 solar energy facility.

7 For the purposes of this paragraph, "agricultural
8 activities" means the activities described in
9 paragraphs (1) to (3);

10 [~~22~~] (21) Geothermal resources exploration and geothermal
11 resources development, as defined under section 182-1;
12 or

13 [~~23~~] (22) Hydroelectric facilities, including the
14 appurtenances associated with the production and
15 transmission of hydroelectric energy, subject to
16 section 205-2; provided that the hydroelectric
17 facilities and their appurtenances:

18 (A) Shall consist of a small hydropower facility as
19 defined by the United States Department of
20 Energy, including:



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- 1 (i) Impoundment facilities using a dam to store
- 2 water in a reservoir;
- 3 (ii) A diversion or run-of-river facility that
- 4 channels a portion of a river through a
- 5 canal or channel; and
- 6 (iii) Pumped storage facilities that store energy
- 7 by pumping water uphill to a reservoir at
- 8 higher elevation from a reservoir at a lower
- 9 elevation to be released to turn a turbine
- 10 to generate electricity;
- 11 (B) Comply with the state water code, chapter 174C;
- 12 (C) Shall, if over five hundred kilowatts in
- 13 hydroelectric generating capacity, have the
- 14 approval of the commission on water resource
- 15 management, including a new instream flow
- 16 standard established for any new hydroelectric
- 17 facility; and
- 18 (D) Do not impact or impede the use of agricultural
- 19 land or the availability of surface or ground
- 20 water for all uses on all parcels that are served



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1 by the ground water sources or streams for which
2 hydroelectric facilities are considered."

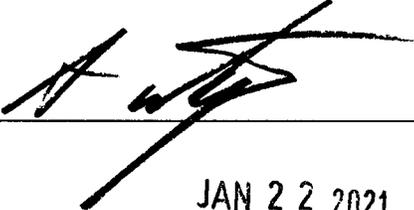
3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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: _____



JAN 22 2021



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Report Title:

Class B Agricultural Lands; Solar Energy Facilities; Prohibited

Description:

Prohibits certain solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B.

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

