

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N.S. CHANG
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
ENERGY AND INTERGOVERNMENTAL AFFAIRS**

**Friday, February 7, 2025
1:11 PM
State Capitol, Conference Room 229 & Videoconference**

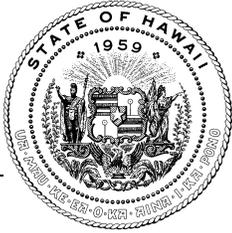
**In consideration of
SENATE BILL 443
RELATING TO AGRICULTURAL LANDS**

Senate Bill 443 proposes to require that lands within the agricultural district that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources (Board) that the lands are also being used for a farming operation. **The Department of Land and Natural Resources (Department) provides the following comments.**

The Department recognizes the importance of ensuring that agricultural lands remain productive while accommodating renewable energy development. However, this measure would require the Board to certify activities on private lands in the agricultural district that it has no jurisdiction over. The Department does not have the statutory authority, expertise, or resources to evaluate whether lands are being used for farming operations. The term "farming operations" is not defined in this measure, and assessing agricultural activities falls within the expertise of the Department of Agriculture (DOA).

If certification is required, the Department respectfully suggests that DOA would be the more appropriate agency to implement this provision.

Thank you for the opportunity to testify on this measure.



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SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

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Testimony of
MARK B. GLICK, Chief Energy Officer

before the
**SENATE COMMITTEES ON WATER AND LAND
AND
ENERGY AND INTERGOVERNMENTAL AFFAIRS**

Friday, February 7, 2025
1:11 PM
State Capitol, Conference Room 229 and Videoconference

Providing Comments on
SB 443

RELATING TO AGRICULTURAL LANDS.

Chairs Inouye and Wakai, Vice Chairs Elefante and Chang, and Members of the Committees, the Hawai'i State Energy Office (HSEO) is providing comments on SB 443, which would require certain proposed solar energy projects that are applying for a special use permit on certain agricultural land to obtain an additional certification from "the board" stating that the lands are also used for a farming operation.

If, as stated in the bill description, the board in question is the Board of Land and Natural Resources (BLNR), HSEO is concerned that the statutory change proposed by this bill would add complexity to an already intricate and rigorous land use process and raise questions regarding jurisdictional oversight and procedural requirements. Since the bill lacks a preamble, it is difficult to assess the problem it intends to address. The description of the bill mentions the Board of Land and Natural Resources; however, the bill itself only refers to "the board."

HSEO understands the importance of preserving agricultural productivity and appreciates that the potential for synergies between energy and agriculture will only occur with diligent effort. It has been noted that a soil classification of "B" or "C" does not necessarily mean that the parcel has all the necessary attributes for successful use

in commercial agriculture. As pointed out in the *Soil Classification Systems and Use in Regulating Agricultural Lands Study Final Report* recently filed with the Legislature:

“...The current Land Study Bureau (LSB) model is based on data and methodologies from the 1960s and 1970s, which fail to reflect Hawai'i's contemporary agricultural landscape, economic conditions, and soil science advancements. This limits the model's effectiveness in supporting accurate, data-driven agricultural policy and land-use decisions.”¹

In the case of agricultural lands that have remained fallow and unused for extended periods, not contributing to agricultural production, renewable energy development could bring the lands into agricultural production and provide clean energy while managing vegetation and reducing wildfire risk. It is possible that infrastructure supported by the energy projects – irrigation water and security, for example – could improve the agricultural productivity of such lands.

Currently, under Hawai'i Revised Statutes (HRS) section 205-2(d)(6), solar energy facilities placed on class B or C land are permissible uses if they occupy less than ten percent of the land or less than 20 acres, whichever is less. If the solar energy facility is to occupy more land, a special use permit is required:

- (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;²

In HRS section 205-4.5 (Permissible Uses within the agricultural districts), subparagraphs (a) (20) and (21) reiterate the requirements listed above regarding land coverage and special use permits. In addition, projects exceeding 20 acres or ten percent of the land have an additional requirement: they must make the area occupied by the solar energy facility available for compatible agricultural activities:

- (20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for

¹ *Soil Classification Systems & Use in Regulating Agricultural Lands Study Final Report*, DBEDT, December 18, 2024, https://www.capitol.hawaii.gov/sessions/session2025/bills/DC174_.pdf

² Hawai'i Revised Statutes §205-2, https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0002.htm

which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A;

- (21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:
- (A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties...³

In HRS section 206 (Special permit), the requirements for county planning commission permits and, in some cases, additional approval by the State Land Use Commission, are set forth:

(a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning and sustainable development, and the department of agriculture for their review and comment.

(b) The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would

³ Hawai'i Revised Statutes §204-4.5, https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0004_0005.htm

promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

(e) A copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered.

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure...⁴

HSEO appreciates the opportunity to highlight the current protections, requirements, and oversight already in place, and requests that the committee carefully consider the potential adverse impacts of SB 443 on existing processes, including questions regarding jurisdiction, and potential unintended consequences in frustrating the addition of renewable projects that serve the public interest.

Thank you for the opportunity to testify.

⁴ Hawai'i Revised Statutes §206, https://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0006.htm

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

TESTIMONY OF WENDY L. GADY
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE SENATE COMMITTEES ON
WATER AND LAND
&
ENERGY AND INTERGOVERNMENTAL AFFAIRS

February 7, 2025
1:11 p.m.
Conference Room 229 & Videoconference

SENATE BILL NO. 443
RELATING TO AGRICULTURAL LANDS

Chairpersons Inouye and Wakai, Vice Chairs Elefante and Chang, and Members of the Committee:

The Agribusiness Development Corporation (ADC) testifies in **support** of Senate Bill No. 443 which requires that lands within the agricultural district that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources. We would also provide some suggested amendments on this measure.

ADC does not feel that the Board of Land and Natural Resources is the appropriate regulatory body to certify lands being also used for a farming operations and suggests that the appropriate certifying body be the Hawaii Department of Agriculture in the proposed measure.

Additionally, ADC suggests that **only** solar energy facilities on lands with soil classified as overall (master) productivity rating **C** be required to be certified for a farming operation as defined under section 165-2.

Thank you for your consideration of our testimony.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEAN M. MATSUKAWA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON WATER AND LAND AND ENERGY AND
INTERGOVERNMENTAL AFFAIRS

FRIDAY, FEBRUARY 7, 2025
1:11 PM
CONFERENCE ROOM 229

SENATE BILL NO. 443
RELATING TO AGRICULTURAL LANDS.

Chairs Inouye and Wakai, Vice Chairs Elefante and Chang and Members of the Committees:

Thank you for the opportunity to provide testimony on Senate Bill No. 443 that requires that lands within the Agricultural District that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources that the lands are also used for a farming operation as defined under Section 165-2. The Department of Agriculture (Department) offers comments.

The Department supports the concept of certifying the agricultural activity for a solar energy facility approved under Section 205-4.5(a)(21)(A) (emphasis added)
“(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:
(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;”

To date, the primary “compatible agricultural activity” employed by solar energy facilities has been sheep grazing meant to control grass and shrubs. There is no explicit requirement that the sheep or any other agricultural use around and under the solar panels of a solar energy facility have to be sold.



This may change as the proposed amendment requires certification that the solar energy facility lands be used for a “farming operation” as defined under Section 165-2 (Hawaii Right to Farm Act):

“Farming operation” means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes but shall not be limited to:

- (1) Agricultural-based commercial operations as described in section [205-2(d)(15)];
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
- (3) Operation of machinery and irrigation pumps;
- (4) Ground and aerial seeding and spraying;
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and
- (6) The employment and use of labor.”

The Department defers to the Board of Land and Natural Resources who is responsible for certifying that the lands for a solar energy facility are also used for a farming operation.

Thank you for the opportunity to present our testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 443, RELATING TO AGRICULTURAL LANDS.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON
ENERGY AND INTERGOVERNMENTAL AFFAIRS

DATE: Friday, February 7, 2025

TIME: 1:11 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Miranda C. Steed, Deputy Attorney General

Chairs Inouye and Wakai and Members of the Committees:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The bill amends section 205-4.5, Hawaii Revised Statutes (HRS), to require that lands used for solar energy facilities in the agricultural district also be certified as farming operations as defined in section 165-2, HRS.

To accomplish this, the bill amends the conditions to obtain a special use permit from the Land Use Commission under section 205-6, HRS, to include a certification that the lands are also used for a farming operation under section 165-2. Page 10, lines 4-11. For lands with soil classified as overall (master) productivity rating B or C, the bill requires certification that the lands are also used for farming operations. However, the certifying entity is referred to as the "board" (page 10, line 9), a term not defined in chapter 205, HRS.

The bill description identifies the Board of Land and Natural Resources (BLNR) as the certifying body. The BLNR's jurisdiction is limited to regulating land use in conservation districts under chapter 183C, HRS. Furthermore, section 205-4.5(a), HRS, concerns the characteristics of permissible use, rather than how such uses are legally established. Therefore, we recommend that the bill be amended on page 10,

lines 9–11, to restate the new condition upon which agricultural land can be used for solar energy facilities—in lieu of a certification—as follows:

(A) The lands are also used for a farming operation, as defined in section 165-2;

Thank you for the opportunity to provide comments.



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February 7, 2025

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS

TESTIMONY ON SB 443
RELATING TO IMPORTANT AGRICULTURAL LANDS

Conference Room 229 & Videoconference
1:11 PM

Aloha Chairs Inouye and Wakai, Vice-Chairs Elefante and Chang, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate, and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports the intent of SB 443, which requires that lands within the agricultural district that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources (BLNR) that the lands are used for a farming operation. While we strongly support efforts to ensure that agricultural lands remain in active agricultural production, we have concerns about whether BLNR is the appropriate agency to certify compliance with farming requirements.

The loss of productive agricultural land to non-agricultural uses is a growing concern. Renewable energy development is an important priority, but it must be balanced with the need to preserve Hawai'i's limited farmland for food production. The state has set ambitious goals for both food and energy sustainability, and careful land use planning is necessary to ensure that agricultural lands continue to support local food production.

Farmland is often targeted for solar energy development because it meets many of the ideal criteria for solar installations, such as flat terrain, dry conditions, and proximity to infrastructure. However, once land is developed for large-scale solar projects, it is unlikely to return to agricultural use. This is especially concerning when high-quality agricultural lands are converted, as they are essential for Hawai'i's ability to increase food production and reduce reliance on imported food.

SB 443 seeks to address this issue by requiring certification that lands with solar energy facilities are also being used for farming. We agree with the intent of ensuring that agricultural lands remain productive, but we question whether BLNR is the appropriate agency to oversee certification. The Department of Agriculture may be better suited for this role, given its expertise in agricultural production and its existing programs for monitoring agricultural activity. Clear and measurable standards must also be established to ensure that farming operations are legitimate and not just nominal agricultural activity to meet compliance requirements.

We encourage further discussion to determine the best approach to ensuring that agricultural lands remain in active production while also accommodating renewable energy development, such as Agrivoltaics. Balancing these priorities is critical to the long-term sustainability of Hawai'i's agriculture and energy systems.

We urge the committee to consider amendments to SB 443 that clarify the appropriate certifying agency and establish clear criteria for agricultural activity on lands with solar energy facilities.

Thank you for the opportunity to testify on this measure.



LATE

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Honolulu, O'ahu

Natalie Urminska
Kaua'i

Aloha Chairs Inouye & Wakai, Vice Chairs Elefante & Chang, and Committee Members,

The Hawai'i Farmers Union is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFU supports and seeks to amend SB443 .**

By requiring solar energy facilities on agricultural lands to verify their active use for farming operations, the bill underscores the importance of preserving Hawaii's agricultural lands for productive use. However, **we question whether the BLNR is the best entity to verify such dual use activities.**

The bill intent to preserve agricultural use would be furthered with the following amendments derived from appendices of OPSD's Soil Classification Systems and Use in Regulating Agricultural Lands Study Final Report pursuant to Act 189, SLH 2022 - which was reported to this legislature as [DC174](#). Further, the [American Farmland Trust's Smart Solar Policy Recommendations](#) provides a robust overview of many of these approaches.

Amendment 1: Classify Lands for Renewable Energy Development Add New Section:

- Direct the State Energy Office, Department of Agriculture and/or the Office of Planning and Sustainable Development to **develop a renewable energy focused classification system for agricultural lands instead of misapplying LSB ratings.**

Amendment 2: Implement Conversion Caps & Fees to Protect Agricultural Land Add a New Subsection to Section 205-4.5(a):

- Mandate **island-level reporting and monitoring** of solar development on agricultural land.
- Establish **conversion caps** limiting the percentage of **prime agricultural land (at least Class A & B)** that can be converted for **solar and energy** developments within **each county**.
- Establish a **per-acre fee** for the conversion of **prime agricultural land** to solar farms, with rates based on:
 - Soil classification, Project permanence, Adoption of agrivoltaic practices
- Require that **funds collected from conversion fees** be reinvested into:
 - Farmland preservation programs, Farm viability initiatives, Soil and water conservation efforts

Amendment 3: Require Best Management Practices for Solar Developments Modify Permitting Requirements to Include:

- **Mandatory soil and water conservation measures** for solar installations on agricultural land.
- **Vegetation and ground cover requirements** to maintain **soil health and prevent erosion**.
- **Post-project decommissioning standards** ensuring land restoration and ongoing agricultural viability.
- Compliance with **state-approved agrivoltaic standards** for projects on prime farmland.

Amendment 4: Define and Incentivize Solar Development on Marginal Lands
Add a New Section:

- Define **marginal farmland** using criteria such as:
 - **LSB rating of 'C' or below**
 - **Parcel size and configuration**
 - **Access to water and infrastructure**
 - **Historical agricultural use**
- Provide **zoning incentives and financial support** for solar energy projects on marginal lands.
- Require **updated zoning and land use policies** to streamline permitting for solar projects in these designated areas.

Amendment 5: Define and Incentivize Agrivoltaics on Agricultural Land
Modify Section 205-4.5(a) to:

- Establish a **clear definition for agrivoltaics** as a **dual-use solar and agricultural practice**.
- Establish **disincentives (e.g., higher conversion fees or restrictions)** for **non-agrivoltaic solar installations on prime farmland**.
- Require periodic **state agency evaluations** of agrivoltaic adoption and its impact on agricultural productivity.

Integrating these considerations into SB443 would further strengthen its objective of preserving Hawaii's agricultural lands.

Mahalo for the opportunity to testify.

Hunter Heavilin
 Advocacy Director
 Hawai'i Farmers Union



To: The Senate Committee on Water and Land (WTL)
and
The Senate Committee on Energy and Intergovernmental Affairs (EIG)
From: Sherry Pollack, 350Hawaii.org
Date: Friday, February 7, 2025, 1:11pm

In strong support of SB443

Aloha Chairs Inouye and Wakai, Vice Chairs Elefante and Chang, and members of the WTL and EIG committees,

I am Co-Founder of the Hawaii chapter of 350.org, the largest international organization dedicated to fighting climate change. 350Hawaii.org **supports SB443** that requires that lands within the agricultural district that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources that the lands are also used for a farming operation.

With the very limited amount of farmland available, it is important to ensure these lands are used properly. Protecting agricultural land means reducing our reliance on food imports and increasing food security. This is an effective strategy Hawaii must follow if we are to successfully tackle the climate crisis.

Agrivoltaics is an innovative approach that balances agricultural and renewable energy production goals. Incorporating solar arrays into farmland can be done successfully without sacrificing that farmland's arability, effectively allowing landowners to cultivate crops and generate clean energy harmoniously at the same time. Supporting these types of policies toward innovative partnerships, done correctly, and that both address protecting our climate and environment and enhancing our food security and resiliency, are a win:win for all.

Mahalo for the opportunity to testify.

Sherry Pollack
Co-Founder, 350Hawaii.org

SB-443

Submitted on: 2/5/2025 2:20:48 PM

Testimony for WTL on 2/7/2025 1:11:00 PM

Submitted By	Organization	Testifier Position	Testify
Theresa M Thompson	Individual	Support	Written Testimony Only

Comments:

I support SB 443 Which requires that lands within the agricultural district that have solar energy facilities must also obtain certification from the Board of Land and Natural Resources that the lands are also used for a farming operation.

Mahalo,

Theresa Thompson