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

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

8       (1) Cultivation of crops, including crops for bioenergy,  
9       flowers, vegetables, foliage, fruits, forage, and  
10       timber;

11       (2) Game and fish propagation;

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

15       (4) Farm dwellings, employee housing, farm buildings, or  
16       activities or uses related to farming and animal  
17       husbandry. For the purposes of this paragraph, "farm



dwelling" means a single-family dwelling located on and accessory to a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

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

(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps; provided that overnight camps in operation before January 1, 1961, may be approved by special permit;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material,



1 vehicle storage, repair or maintenance, treatment  
2 plants, corporation yards, or other similar  
3 structures;

4 (8) Retention, restoration, rehabilitation, or improvement  
5 of buildings or sites of historic or scenic interest;

6 (9) Agricultural-based commercial operations as described  
7 in section 205-2(d)(15);

8 (10) Buildings and uses, including mills, storage, and  
9 processing facilities, maintenance facilities,  
10 photovoltaic, biogas, and other small-scale renewable  
11 energy systems producing energy solely for use in the  
12 agricultural activities of the fee or leasehold owner  
13 of the property, and vehicle and equipment storage  
14 areas that are normally considered directly accessory  
15 to the above-mentioned uses and are permitted under  
16 section 205-2(d);

17 (11) Agricultural parks;

18 (12) Plantation community subdivisions, which as used in  
19 this chapter means an established subdivision or  
20 cluster of employee housing, community buildings, and  
21 agricultural support buildings on land currently or



1           formerly owned, leased, or operated by a sugar or  
2           pineapple plantation; provided that the existing  
3           structures may be used or rehabilitated for use, and  
4           new employee housing and agricultural support  
5           buildings may be allowed on land within the  
6           subdivision as follows:

7           (A)   The employee housing is occupied by employees or  
8                 former employees of the plantation who have a  
9                 property interest in the land;

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

13          (C)   The agricultural support buildings shall be  
14                 rented or leased to agricultural business  
15                 operators or agricultural support services;

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



1 operations; provided further that this paragraph shall  
2 apply only to a county that has adopted ordinances  
3 regulating agricultural tourism under section 205-5;  
4 (14) 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  
10 section 205-5; provided further that the agricultural  
11 tourism activities coexist with a bona fide  
12 agricultural activity. For the purposes of this  
13 paragraph, "bona fide agricultural activity" means a  
14 farming operation as defined in section 165-2;  
15 (15) Wind energy facilities, including the appurtenances  
16 associated with the production and transmission of  
17 wind generated energy; provided that the wind energy  
18 facilities and appurtenances are compatible with  
19 agriculture uses and cause minimal adverse impact on  
20 agricultural land;



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

9 For the purposes of this paragraph:

10 "Appurtenances" means operational infrastructure  
11 of the appropriate type and scale for economic  
12 commercial storage and distribution, and other similar  
13 handling of feedstock, fuels, and other products of  
14 biofuel processing facilities.

15 "Biofuel processing facility" means a facility  
16 that produces liquid or gaseous fuels from organic  
17 sources such as biomass crops, agricultural residues,  
18 and oil crops, including palm, canola, soybean, and  
19 waste cooking oils; grease; food wastes; and animal  
20 residues and wastes that can be used to generate  
21 energy;



(17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be no less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

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

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable



1 energy as defined in section 269-91 or renewable fuel  
2 including electrical or thermal energy or liquid or  
3 gaseous fuels from products of agricultural activities  
4 from agricultural lands located in the State.

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

11 (18) Construction and operation of wireless communication  
12 antennas, including small wireless facilities;  
13 provided that, for the purposes of this paragraph,  
14 "wireless communication antenna" means communications  
15 equipment that is either freestanding or placed upon  
16 or attached to an already existing structure and that  
17 transmits and receives electromagnetic radio signals  
18 used in the provision of all types of wireless  
19 communications services; provided further that "small  
20 wireless facilities" shall have the same meaning as in  
21 section 206N-2; provided further that nothing in this





1 paragraph shall be construed to permit the  
2 construction of any new structure that is not deemed a  
3 permitted use under this subsection;

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

17 (20) Solar energy facilities that do not occupy more than  
18 ten per cent of the acreage of the parcel, or twenty  
19 acres of land, whichever is lesser or for which a  
20 special use permit is granted pursuant to  
21 section 205-6; provided that this use shall not be



1 permitted on lands with soil classified by the land  
2 study bureau's detailed land classification as overall  
3 (master) productivity rating class A;

4 (21) Solar energy facilities on lands with soil classified  
5 by the land study bureau's detailed land  
6 classification as overall (master) productivity rating  
7 B or C for which a special use permit is granted  
8 pursuant to section 205-6; provided that:

9 (A) The department of agriculture certifies that the  
10 lands are also used for a farming operation as  
11 defined in section 165-2;

12 [~~(A)~~] (B) The area occupied by the solar energy  
13 facilities is also made available for compatible  
14 agricultural activities at a lease rate that is  
15 at least fifty per cent below the fair market  
16 rent for comparable properties;

17 [~~(B)~~] (C) Proof of financial security to decommission  
18 the facility is provided to the satisfaction of  
19 the appropriate county planning commission before  
20 the date of commencement of commercial  
21 generation; and



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

4           (i) Removal of all equipment related to the  
5           solar energy facility within twelve months  
6           of the conclusion of operation or useful  
7           life; and

8           (ii) Restoration of the disturbed earth to  
9           substantially the same physical condition as  
10          existed before the development of the solar  
11          energy facility.

12          For the purposes of this paragraph, "agricultural  
13          activities" means the activities described in  
14          paragraphs (1) to (3);

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

17          (23) Hydroelectric facilities, including the appurtenances  
18          associated with the production and transmission of  
19          hydroelectric energy, subject to section 205-2;  
20          provided that the hydroelectric facilities and their  
21          appurtenances:



1 (A) Shall consist of a small hydropower facility as  
2 defined by the United States Department of  
3 Energy, including:

4 (i) Impoundment facilities using a dam to store  
5 water in a reservoir;

6 (ii) A diversion or run-of-river facility that  
7 channels a portion of a river through a  
8 canal or channel; and

9 (iii) Pumped storage facilities that store energy  
10 by pumping water uphill to a reservoir at  
11 higher elevation from a reservoir at a lower  
12 elevation to be released to turn a turbine  
13 to generate electricity;

14 (B) Comply with the state water code, chapter 174C;

15 (C) Shall, if over five hundred kilowatts in  
16 hydroelectric generating capacity, have the  
17 approval of the commission on water resource  
18 management, including a new instream flow  
19 standard established for any new hydroelectric  
20 facility; and



(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered; or

(24) Notwithstanding any other law to the contrary, composting and co-composting operations; provided that operations that process their own green waste and do not require permits from the department of health shall use the finished composting product only on the operation's own premises to minimize the potential spread of invasive species."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

DOA; Solar; Agricultural Lands

**Description:**

Requires that lands within the agricultural district that have solar energy facilities must also obtain certification from the Department of Agriculture that the lands are also used for a farming operation. (SD1)

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