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# A BILL FOR AN ACT

RELATING TO AGRIVOLTAICS.

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

1           SECTION 1. The legislature finds that the State's  
2 agricultural lands are a finite and critical resource for local  
3 food production, rural livelihoods, and climate resilience.  
4 Recent trends indicate that agricultural lands are under  
5 increasing pressure from utility-scale renewable energy  
6 development, particularly solar energy facilities. More than  
7 one thousand two hundred acres of agricultural lands with a  
8 productivity rating of B and C have already been converted for  
9 operational solar projects with another one thousand two hundred  
10 acres proposed for conversion. While existing law requires that  
11 a portion of any land used for solar energy facilities be made  
12 available for compatible agricultural activities, this  
13 requirement has not yielded substantial or sustained  
14 agricultural production.

15           The legislature further finds that many farmers, especially  
16 beginning farmers, face significant barriers to accessing land,  
17 infrastructure, and affordable long-term leasing opportunities.



1 Solar energy facilities constructed on agricultural lands often  
2 feature internal roads, fencing, utilities, and security  
3 features that make them suitable for concurrent agricultural use  
4 when properly designed. Agrivoltaics, the integration of  
5 agricultural production within solar project areas, can expand  
6 agricultural opportunities while enabling the State to achieve  
7 its renewable energy goals.

8 The legislature also finds that a clear statewide standard  
9 is needed to ensure that solar development on agricultural lands  
10 with a productivity rating of B, C, or D supports commercial  
11 agricultural production. Establishing a strong regulatory  
12 framework for agrivoltaics while requiring that beginning  
13 farmers receive the first opportunity to lease land primed for  
14 agricultural activity within solar project areas will expand  
15 agricultural use without diminishing the planning authority of a  
16 county or duplicating the State's existing agricultural park  
17 programs. The legislature additionally finds that the  
18 department of agriculture and biosecurity is best positioned to  
19 establish rules and best practices, verify farmer eligibility,  
20 and enforce compliance with agrivoltaics regulations while



1 allowing landowners the flexibility to select farmers and manage  
2 operations.

3 Accordingly, the purpose of this Act is to:

4 (1) Require a landowner leasing agricultural sub-parcels  
5 on property used for agrivoltaics to prioritize lease  
6 offers for beginning farmers;

7 (2) Require a landowner leasing agricultural sub-parcels  
8 on property used for agrivoltaics to submit an annual  
9 agrivoltaics compliance report to the department of  
10 agriculture and biosecurity;

11 (3) Authorize the department of agriculture and  
12 biosecurity to penalize any landowner that fails to  
13 meet agrivoltaics requirements;

14 (4) Authorize the development of solar energy facilities  
15 on agricultural lands with productivity ratings of B,  
16 C, or D under certain conditions; and

17 (5) Authorize a county planning commission or department  
18 to issue special permits for agrivoltaics requirements  
19 before the approval of the land use commission under  
20 certain conditions.



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

4 "§141- Agrivoltaics; requirements; reports; rules;  
5 penalties; definitions. (a) A landowner who offers a lease for  
6 an agricultural sub-parcel on a property used for agrivoltaics  
7 shall prioritize lease offers for beginning farmers for a period  
8 of \_\_\_\_\_ days; provided that if no beginning farmer accepts the  
9 lease offer during this period, the landowner may offer the  
10 lease to a farmer engaged in commercial agricultural production.

11 (b) A landowner who offers a lease for an agricultural  
12 sub-parcel on a property used for agrivoltaics shall submit an  
13 annual agrivoltaics compliance report to the department. The  
14 agrivoltaics compliance report shall include:

- 15 (1) Acreage of the property in active commercial  
16 production;
- 17 (2) Identification of any beginning farmers and commercial  
18 farmers leasing a sub-parcel;
- 19 (3) Documentation of agricultural output; and
- 20 (4) Any periods of noncompliance with this section and any  
21 corrective or enforcement actions taken.



1        (c) If the department determines that a landowner is not  
2 in compliance with this section or section 205-4.5(a) (21), the  
3 department shall issue a written notice to the landowner and  
4 allow the landowner a period of four months from the receipt of  
5 the written notice to cure the deficiency; provided that if the  
6 department determines that the landowner has failed to cure the  
7 deficiency within this period, the department may fine the  
8 landowner not more than \$5,000 per acre per year; provided  
9 further that for repeated or substantial violations, the  
10 department may:

- 11        (1) Require the landowner to increase the acreage used for  
12        commercial agricultural production;
- 13        (2) Temporarily suspend compliance certification; or
- 14        (3) Refer the matter to the county or public utilities  
15        commission for consideration of permit modifications.

16        (d) The department, in consultation with the public  
17 utilities commission and appropriate county, shall adopt rules  
18 pursuant to chapter 91 to carry out the purposes for this  
19 section.

20        (e) For the purposes of this section:



1       "Agrivoltaics" means the intentional integration of  
2 agricultural activities and solar energy generation on the same  
3 site to support agricultural operations pursuant to section  
4 205-4.5(a)(21).

5       "Beginning farmer" means a new farm enterprise or person  
6 who has not farmed commercially or has been farming for less  
7 than \_\_\_\_\_ years.

8       "Commercial agricultural production" means a commercial  
9 agricultural facility or pursuit, that includes, in whole or in  
10 part:

- 11       (1) The care and production of livestock, livestock  
12       products, poultry, and poultry products;
- 13       (2) The care and production of apiary, horticultural, and  
14       floricultural products;
- 15       (3) The planting, cultivating, and harvesting of crops or  
16       trees; and
- 17       (4) Any other activity that is directly associated with  
18       agriculture.

19       "Department" means the department of agriculture and  
20 biosecurity."



1 SECTION 3. 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  
18 dwelling" means a single-family dwelling located on  
19 and accessory to a farm, including clusters of single-  
20 family farm dwellings permitted within agricultural  
21 parks developed by the State, or where agricultural



- 1 activity provides income to the family occupying the  
2 dwelling;
- 3 (5) Public institutions and buildings that are necessary  
4 for agricultural practices;
- 5 (6) Public and private open area types of recreational  
6 uses, including day camps, picnic grounds, parks, and  
7 riding stables, but not including dragstrips,  
8 airports, drive-in theaters, golf courses, golf  
9 driving ranges, country clubs, and overnight camps;  
10 provided that overnight camps in operation before  
11 January 1, 1961, may be approved by special permit;
- 12 (7) Public, private, and quasi-public utility lines and  
13 roadways, transformer stations, communications  
14 equipment buildings, solid waste transfer stations,  
15 major water storage tanks, and appurtenant small  
16 buildings such as booster pumping stations, but not  
17 including offices or yards for equipment, material,  
18 vehicle storage, repair or maintenance, treatment  
19 plants, corporation yards, or other similar  
20 structures;



- 1           (8) Retention, restoration, rehabilitation, or improvement
- 2                   of buildings or sites of historic or scenic interest;
- 3           (9) Agricultural-based commercial operations as described
- 4                   in section 205-2(d)(15);
- 5           (10) Buildings and uses, including mills, storage, and
- 6                   processing facilities, maintenance facilities,
- 7                   photovoltaic, biogas, and other small-scale renewable
- 8                   energy systems producing energy solely for use in the
- 9                   agricultural activities of the fee or leasehold owner
- 10                  of the property, and vehicle and equipment storage
- 11                  areas that are normally considered directly accessory
- 12                  to the above-mentioned uses and are permitted under
- 13                  section 205-2(d);
- 14           (11) Agricultural parks;
- 15           (12) Plantation community subdivisions, which as used in
- 16                   this chapter means an established subdivision or
- 17                   cluster of employee housing, community buildings, and
- 18                   agricultural support buildings on land currently or
- 19                   formerly owned, leased, or operated by a sugar or
- 20                   pineapple plantation; provided that the existing
- 21                   structures may be used or rehabilitated for use, and



1 new employee housing and agricultural support  
2 buildings may be allowed on land within the  
3 subdivision as follows:

4 (A) The employee housing is occupied by employees or  
5 former employees of the plantation who have a  
6 property interest in the land;

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

10 (C) The agricultural support buildings shall be  
11 rented or leased to agricultural business  
12 operators or agricultural support services;

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



- 1           (14) Agricultural tourism activities, including overnight  
2 accommodations of twenty-one days or less, for any one  
3 stay within a county; provided that this paragraph  
4 shall apply only to a county that includes at least  
5 three islands and has adopted ordinances regulating  
6 agricultural tourism activities pursuant to section  
7 205-5; provided further that the agricultural tourism  
8 activities coexist with a bona fide agricultural  
9 activity. For the purposes of this paragraph, "bona  
10 fide agricultural activity" means a farming operation  
11 as defined in section 165-2;
- 12           (15) Wind energy facilities, including the appurtenances  
13 associated with the production and transmission of  
14 wind generated energy; provided that the wind energy  
15 facilities and appurtenances are compatible with  
16 agriculture uses and cause minimal adverse impact on  
17 agricultural land;
- 18           (16) Biofuel processing facilities, including the  
19 appurtenances associated with the production and  
20 refining of biofuels that is normally considered  
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing  
2 facilities and appurtenances do not adversely impact  
3 agricultural land and other agricultural uses in the  
4 vicinity.

5 For the purposes of this paragraph:

6 "Appurtenances" means operational infrastructure  
7 of the appropriate type and scale for economic  
8 commercial storage and distribution, and other similar  
9 handling of feedstock, fuels, and other products of  
10 biofuel processing facilities.

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

18 (17) Agricultural-energy facilities, including  
19 appurtenances necessary for an agricultural-energy  
20 enterprise; provided that the primary activity of the  
21 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an  
2 agricultural-energy enterprise, the total acreage  
3 devoted to agricultural activity shall be no less than  
4 ninety per cent of the total acreage of the  
5 agricultural-energy enterprise. The agricultural-  
6 energy facility shall be limited to lands owned,  
7 leased, licensed, or operated by the entity conducting  
8 the agricultural activity.

9 As used in this paragraph:

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

12 "Agricultural-energy enterprise" means an  
13 enterprise that integrally incorporates an  
14 agricultural activity with an agricultural-energy  
15 facility.

16 "Agricultural-energy facility" means a facility  
17 that generates, stores, or distributes renewable  
18 energy as defined in section 269-91 or renewable fuel  
19 including electrical or thermal energy or liquid or  
20 gaseous fuels from products of agricultural activities  
21 from agricultural lands located in the State.



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

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



- 1           (19) Agricultural education programs conducted on a farming  
2           operation as defined in section 165-2, for the  
3           education and participation of the general public;  
4           provided that the agricultural education programs are  
5           accessory and secondary to the principal agricultural  
6           use of the parcels or lots on which the agricultural  
7           education programs are to occur and do not interfere  
8           with surrounding farm operations. For the purposes of  
9           this paragraph, "agricultural education programs"  
10          means activities or events designed to promote  
11          knowledge and understanding of agricultural activities  
12          and practices conducted on a farming operation as  
13          defined in section 165-2;
- 14          (20) Solar energy facilities that do not occupy more than  
15          ten per cent of the acreage of the parcel, or twenty  
16          acres of land, whichever is lesser or for which a  
17          special use permit is granted pursuant to section 205-  
18          6; provided that this use shall not be permitted on  
19          lands with soil classified by the land study bureau's  
20          detailed land classification as overall (master)  
21          productivity rating class A;



1           (21) Solar energy facilities on lands with soil classified  
2           by the land study bureau's detailed land  
3           classification as overall (master) productivity rating  
4           B [~~or~~], C, or D for which a special use permit is  
5           granted pursuant to section 205-6; provided that:  
6           (A) The area [~~occupied~~] under and adjacent to by the  
7           solar energy facilities [~~is also made available~~  
8           ~~for at~~] and appurtenances shall be:  
9           (i) Put into compatible agricultural activities  
10           by a farm operation that derives revenue  
11           from the sale of the production from  
12           agricultural activities as evidenced by the  
13           Internal Revenue Service, schedule F (form  
14           1040), profit or loss from farming, and  
15           copies delivered to the relevant county  
16           planning commission and land use commission;  
17           provided further that the filing of schedule  
18           F shall be made a condition of special  
19           permit approval; and





1            (i) "Agricultural activities" means the  
2            activities described in paragraphs (1) to  
3            (3) [~~7~~] that meet the State's local food  
4            production goals;

5            (ii) "Agrivoltaics" has the same meaning as  
6            defined by section 141- ; and

7            (iii) "Farm operation" has the same meaning as  
8            defined by section 165-2;

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

11           (23) Hydroelectric facilities, including the appurtenances  
12           associated with the production and transmission of  
13           hydroelectric energy, subject to section 205-2;  
14           provided that the hydroelectric facilities and their  
15           appurtenances:

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

19           (i) Impoundment facilities using a dam to store  
20           water in a reservoir;



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



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

8 SECTION 4. Section 205-6, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§205-6 Special permit.** (a) Subject to this section, the  
11 county planning commission may permit certain unusual and  
12 reasonable uses within agricultural and rural districts other  
13 than those for which the district is classified. Any person who  
14 desires to use the person's land within an agricultural or rural  
15 district other than for an agricultural or rural use, as the  
16 case may be, may petition the planning commission of the county  
17 within which the person's land is located for permission to use  
18 the person's land in the manner desired. Each county may  
19 establish the appropriate fee for processing the special permit  
20 petition. Copies of the special permit petition shall be  
21 forwarded to the land use commission, the office of planning and



1 sustainable development, and the department of agriculture and  
2 biosecurity for their review and comment.

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

12 (c) The county planning commission may, under [~~such~~]  
13 protective restrictions as may be deemed necessary, permit the  
14 desired use, but only when the use would promote the  
15 effectiveness and objectives of this chapter; provided that a  
16 use proposed for designated important agricultural lands shall  
17 not conflict with any part of this chapter. A decision in favor  
18 of the applicant shall require a majority vote of the total  
19 membership of the county planning commission.

20 (d) Special permits for land the area of which is greater  
21 than fifteen acres or for lands designated as important



1 agricultural lands shall be subject to approval by the land use  
2 commission. The land use commission may impose additional  
3 restrictions as may be necessary or appropriate in granting the  
4 approval, including the adherence to representations made by the  
5 applicant.

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

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



1 (f) Land uses substantially involving or supporting  
2 educational ecotourism, related to the preservation of native  
3 Hawaiian endangered, threatened, proposed, and candidate  
4 species, that are allowed in an approved habitat conservation  
5 plan under section 195D-21 or safe harbor agreement under  
6 section 195D-22, which are not identified as permissible uses  
7 within the agricultural district under sections 205-2 and  
8 205-4.5, may be permitted in the agricultural district by  
9 special permit under this section, on lands with soils  
10 classified by the land study bureau's detailed land  
11 classification as overall (master) productivity rating class C,  
12 D, E, or U.

13 (g) Except in a county with a county agriculture  
14 designation ordinance, special permits for agrivoltaics may be  
15 issued by the respective county planning commission or  
16 department before approval by the land use commission. Special  
17 permits may be subject to conditions imposed by the respective  
18 county planning commission or department for the purposes of  
19 this chapter. A county may adopt ordinances that impose  
20 agrivoltaics requirements in addition to the requirements  
21 established pursuant to sections 141- and 205-4.5(a) (21).



1        For the purposes of this subsection, "agrivoltaics" has the  
2 same meaning as defined in section 141- ."

3        SECTION 5. If any provision of this Act, or the  
4 application thereof to any person or circumstance, is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of the Act that can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this Act are severable.

9        SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11        SECTION 7. This Act shall take effect upon its approval.

12



**Report Title:**

DAB; Public Utilities Commission; LUC; Counties; Agriculture; Agrivoltaics; Landowners; Beginning Farmers; Reports; Solar Energy Facilities; Renewable Energy; Special Permits

**Description:**

Requires a landowner leasing agricultural sub-parcels on property used for agrivoltaics to prioritize lease offers for beginning farmers. Requires a landowner leasing agricultural sub-parcels on property used for agrivoltaics to submit an annual agrivoltaics compliance report to the Department of Agriculture and Biosecurity. Authorizes DAB to penalize any landowner that fails to meet agrivoltaics requirements. Authorizes the development of solar energy facilities on agricultural lands with productivity ratings of B, C, or D under certain conditions. Authorizes a county planning commission to issue special permits for agrivoltaics requirements before the approval of the Land Use Commission under certain conditions.  
(SD1)

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