
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. Section 205-2, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, crops for bioenergy, orchards, forage, and
6 forestry;

7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation;

9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;

12 (4) Wind-generated energy production for public, private,
13 and commercial use;

14 (5) Biofuel production, as described in section 205-
15 4.5(a)(16), for public, private, and commercial use;

16 (6) Solar energy facilities; provided that:



- 1 (A) This paragraph shall apply only to land with soil
2 classified by the land study bureau's detailed
3 land classification as overall (master)
4 productivity rating class B, C, D, or E; and
- 5 (B) Solar energy facilities placed within land with
6 soil classified as overall productivity rating
7 class B or C [~~shall~~]:
- 8 (i) Shall not occupy more than ten per cent of
9 the acreage of the parcel, or twenty acres
10 of land, whichever is lesser, unless a
11 special use permit is granted pursuant to
12 section 205-6; and
- 13 (ii) Are permissible uses as long as the
14 department of agriculture certifies that the
15 lands are also used for a farming operation
16 as defined in section 165-2;
- 17 (7) Bona fide agricultural services and uses that support
18 the agricultural activities of the fee or leasehold
19 owner of the property and accessory to any of the
20 above activities, regardless of whether conducted on
21 the same premises as the agricultural activities to



- 1 which they are accessory, including farm dwellings as
2 defined in section 205-4.5(a)(4), employee housing,
3 farm buildings, mills, storage facilities, processing
4 facilities, photovoltaic, biogas, and other small-
5 scale renewable energy systems producing energy solely
6 for use in the agricultural activities of the fee or
7 leasehold owner of the property, agricultural-energy
8 facilities as defined in section 205-4.5(a)(17),
9 vehicle and equipment storage areas, and plantation
10 community subdivisions as defined in section 205-
11 4.5(a)(12);
- 12 (8) Wind machines and wind farms;
- 13 (9) Small-scale meteorological, air quality, noise, and
14 other scientific and environmental data collection and
15 monitoring facilities occupying less than one-half
16 acre of land; provided that these facilities shall not
17 be used as or equipped for use as living quarters or
18 dwellings;
- 19 (10) Agricultural parks;
- 20 (11) 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 (12) 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 (13) Open area recreational facilities;



- 1 (14) Geothermal resources exploration and geothermal
- 2 resources development, as defined under section 182-1;
- 3 (15) Agricultural-based commercial operations registered in
- 4 Hawaii, including:
- 5 (A) A roadside stand that is not an enclosed
- 6 structure, owned and operated by a producer for
- 7 the display and sale of agricultural products
- 8 grown in Hawaii and value-added products that
- 9 were produced using agricultural products grown
- 10 in Hawaii;
- 11 (B) Retail activities in an enclosed structure owned
- 12 and operated by a producer for the display and
- 13 sale of agricultural products grown in Hawaii,
- 14 value-added products that were produced using
- 15 agricultural products grown in Hawaii, logo items
- 16 related to the producer's agricultural
- 17 operations, and other food items;
- 18 (C) A retail food establishment owned and operated by
- 19 a producer and permitted under chapter 11-50,
- 20 Hawaii administrative rules, that prepares and
- 21 serves food at retail using products grown in



1 Hawaii and value-added products that were
2 produced using agricultural products grown in
3 Hawaii;

4 (D) A farmers' market, which is an outdoor market
5 limited to producers selling agricultural
6 products grown in Hawaii and value-added products
7 that were produced using agricultural products
8 grown in Hawaii; and

9 (E) A food hub, which is a facility that may contain
10 a commercial kitchen and provides for the
11 storage, processing, distribution, and sale of
12 agricultural products grown in Hawaii and value-
13 added products that were produced using
14 agricultural products grown in Hawaii.

15 The owner of an agricultural-based commercial
16 operation shall certify, upon request of an officer or
17 agent charged with enforcement of this chapter under
18 section 205-12, that the agricultural products
19 displayed or sold by the operation meet the
20 requirements of this paragraph;



1 (16) Hydroelectric facilities as described in section 205-
2 4.5(a)(23); and

3 (17) Composting and co-composting operations; provided that
4 operations that process their own green waste and do
5 not require permits from the department of health
6 shall use the finished composting product only on the
7 operation's own premises to minimize the potential
8 spread of invasive species.

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

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

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

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



- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. For the purposes of this paragraph, "farm
11 dwelling" means a single-family dwelling located on
12 and accessory to a farm, including clusters of
13 single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
3 provided that overnight camps in operation before
4 January 1, 1961, may be approved by special permit;
- 5 (7) Public, private, and quasi-public utility lines and
6 roadways, transformer stations, communications
7 equipment buildings, solid waste transfer stations,
8 major water storage tanks, and appurtenant small
9 buildings such as booster pumping stations, but not
10 including offices or yards for equipment, material,
11 vehicle storage, repair or maintenance, treatment
12 plants, corporation yards, or other similar
13 structures;
- 14 (8) Retention, restoration, rehabilitation, or improvement
15 of buildings or sites of historic or scenic interest;
- 16 (9) Agricultural-based commercial operations as described
17 in section 205-2(d)(15);
- 18 (10) Buildings and uses, including mills, storage, and
19 processing facilities, maintenance facilities,
20 photovoltaic, biogas, and other small-scale renewable
21 energy systems producing energy solely for use in the



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

6 (11) Agricultural parks;

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

17 (A) The employee housing [~~is~~] shall be occupied by
18 employees or former employees of the plantation
19 who have a property interest in the land;



- 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; provided further that this paragraph shall
14 apply only to a county that has adopted ordinances
15 regulating agricultural tourism under section 205-5;
- 16 (14) Agricultural tourism activities, including overnight
17 accommodations of twenty-one days or less, for any one
18 stay within a county; provided that this paragraph
19 shall apply only to a county that includes at least
20 three islands and has adopted ordinances regulating
21 agricultural tourism activities pursuant to



1 section 205-5; provided further that the agricultural
2 tourism activities coexist with a bona fide
3 agricultural activity. For the purposes of this
4 paragraph, "bona fide agricultural activity" means a
5 farming operation as defined in section 165-2;

6 (15) Wind energy facilities, including the appurtenances
7 associated with the production and transmission of
8 wind generated energy; provided that the wind energy
9 facilities and appurtenances are compatible with
10 agriculture uses and cause minimal adverse impact on
11 agricultural land;

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

20 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 no less than
20 ninety per cent of the total acreage of the
21 agricultural-energy enterprise. The



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

4 As used in this paragraph:

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

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

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

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



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

3 (18) Construction and operation of wireless communication
4 antennas, including small wireless facilities;
5 provided that[7] 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



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 that do not occupy more than
10 ten per cent of the acreage of the parcel, or twenty
11 acres of land, whichever is lesser or for which a
12 special use permit is granted pursuant to
13 section 205-6; provided that this use shall not be
14 permitted on lands with soil classified by the land
15 study bureau's detailed land classification as overall
16 (master) productivity rating class A;

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



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

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

9 [~~(B)~~] (C) Proof of financial security to decommission
10 the facility is provided to the satisfaction of
11 the appropriate county planning commission before
12 the date of commencement of commercial
13 generation; and

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

17 (i) Removal of all equipment related to the
18 solar energy facility within twelve months
19 of the conclusion of operation or useful
20 life; and



1 (ii) Restoration of the disturbed earth to
2 substantially the same physical condition as
3 existed before the development of the solar
4 energy facility.

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

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

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

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

18 (i) Impoundment facilities using a dam to store
19 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 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

DOA; Solar; Agricultural Lands

Description:

Requires that lands within the agricultural district with class B or C soils that have solar energy facilities must also obtain certification from the Department of Agriculture that the lands are also used for a farming operation. Effective 7/1/3000.

(HD1)

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