
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature finds that utility scale solar
2 projects are an essential component of Hawaii's clean energy and
3 zero emissions future. The legislature also finds that
4 increasing food security and production of food for in-state
5 consumption is needed to ensure Hawaii's future sustainability.

6 The purpose of this Act is to authorize the development of
7 utility scale solar projects on certain lands; provided that the
8 utility scale solar project is furthering the use of the land it
9 is on or near for food production.

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

12 "(d) Agricultural districts shall include:

13 (1) Activities or uses as characterized by the cultivation
14 of crops, crops for bioenergy, orchards, forage, and
15 forestry;

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



- 1 (3) Aquaculture, which means the production of aquatic
- 2 plant and animal life within ponds and other bodies of
- 3 water;
- 4 (4) Wind-generated energy production for public, private,
- 5 and commercial use;
- 6 (5) Biofuel production, as described in section
- 7 205-4.5(a)(16), for public, private, and commercial
- 8 use;
- 9 (6) Solar energy facilities; provided that:
- 10 (A) This paragraph shall apply only to land with soil
- 11 classified by the land study bureau's detailed
- 12 land classification as overall (master)
- 13 productivity rating class A, B, C, D, or E; and
- 14 (B) Solar energy facilities placed within land with
- 15 soil classified as overall productivity rating
- 16 class A, B, or C shall not occupy more than ten
- 17 per cent of the acreage of the parcel, or twenty
- 18 acres of land, whichever is lesser, unless a
- 19 special use permit is granted pursuant to section
- 20 205-6;



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



1 be used as or equipped for use as living quarters or
2 dwellings;

3 (10) Agricultural parks;

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

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



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (13) Open area recreational facilities;

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

7 (15) Agricultural-based commercial operations registered in
8 Hawaii, including:

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

15 (B) Retail activities in an enclosed structure owned
16 and operated by a producer for the display and
17 sale of agricultural products grown in Hawaii,
18 value-added products that were produced using
19 agricultural products grown in Hawaii, logo items
20 related to the producer's agricultural
21 operations, and other food items;



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

8 (D) A farmers' market, which is an outdoor market
9 limited to producers selling agricultural
10 products grown in Hawaii and value-added products
11 that were produced using agricultural products
12 grown in Hawaii; and

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

19 The owner of an agricultural-based commercial
20 operation shall certify, upon request of an officer or
21 agent charged with enforcement of this chapter under



1 section 205-12, that the agricultural products
2 displayed or sold by the operation meet the
3 requirements of this paragraph; and

4 (16) Hydroelectric facilities as described in section
5 205-4.5(a)(23).

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

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

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

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

18 (1) Cultivation of crops, including crops for bioenergy,
19 flowers, vegetables, foliage, fruits, forage, and
20 timber;

21 (2) Game and fish propagation;



- 1 (3) Raising of livestock, including poultry, bees, fish,
2 or other animal or aquatic life that are propagated
3 for economic or personal use;
- 4 (4) Farm dwellings, employee housing, farm buildings, or
5 activities or uses related to farming and animal
6 husbandry. "Farm dwelling", as used in this
7 paragraph, means a single-family dwelling located on
8 and used in connection with a farm, including clusters
9 of single-family farm dwellings permitted within
10 agricultural parks developed by the State, or where
11 agricultural activity provides income to the family
12 occupying the dwelling;
- 13 (5) Public institutions and buildings that are necessary
14 for agricultural practices;
- 15 (6) Public and private open area types of recreational
16 uses, including day camps, picnic grounds, parks, and
17 riding stables, but not including dragstrips,
18 airports, drive-in theaters, golf courses, golf
19 driving ranges, country clubs, and overnight camps;
- 20 (7) Public, private, and quasi-public utility lines and
21 roadways, transformer stations, communications



1 equipment buildings, solid waste transfer stations,
2 major water storage tanks, and appurtenant small
3 buildings such as booster pumping stations, but not
4 including offices or yards for equipment, material,
5 vehicle storage, repair or maintenance, treatment
6 plants, corporation yards, or other similar
7 structures;

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

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

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

21 (11) Agricultural parks;



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

11 (A) The employee housing is occupied by employees or
12 former employees of the plantation who have a
13 property interest in the land;

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

17 (C) The agricultural support buildings shall be
18 rented or leased to agricultural business
19 operators or agricultural support services;

20 (13) 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 (14) 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 (15) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of



1 wind generated energy; provided that the wind energy
2 facilities and appurtenances are compatible with
3 agriculture uses and cause minimal adverse impact on
4 agricultural land;

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

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuel processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,



1 and oil crops, including palm, canola, soybean, and
2 waste cooking oils; grease; food wastes; and animal
3 residues and wastes that can be used to generate
4 energy;

5 (17) Agricultural-energy facilities, including
6 appurtenances necessary for an agricultural-energy
7 enterprise; provided that the primary activity of the
8 agricultural-energy enterprise is agricultural
9 activity. To be considered the primary activity of an
10 agricultural-energy enterprise, the total acreage
11 devoted to agricultural activity shall be not less
12 than ninety per cent of the total acreage of the
13 agricultural-energy enterprise. The agricultural-
14 energy facility shall be limited to lands owned,
15 leased, licensed, or operated by the entity conducting
16 the agricultural activity.

17 As used in this paragraph:

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

20 "Agricultural-energy enterprise" means an
21 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

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

15 (18) Construction and operation of wireless communication
16 antennas, including small wireless facilities;
17 provided that, for the purposes of this paragraph,
18 "wireless communication antenna" means communications
19 equipment that is either freestanding or placed upon
20 or attached to an already existing structure and that
21 transmits and receives electromagnetic radio signals



1 used in the provision of all types of wireless
2 communications services; provided further that "small
3 wireless facilities" shall have the same meaning as in
4 section 206N-2; provided further that nothing in this
5 paragraph shall be construed to permit the
6 construction of any new structure that is not deemed a
7 permitted use under this subsection;

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



- 1 (20) Solar energy facilities that do not occupy more than
2 ten per cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser or for which a
4 special use permit is granted pursuant to section 205-
5 6; provided that this use shall not be permitted on
6 lands with soil classified by the land study bureau's
7 detailed land classification as overall (master)
8 productivity rating class A unless either permitted
9 pursuant to paragraph (21) or the solar energy
10 facilities are:
- 11 (A) Located on a paved or unpaved road in existence
12 as of December 31, 2013, and the parcel of land
13 upon which the paved or unpaved road is located
14 has a valid county agriculture tax dedication
15 status or a valid agricultural conservation
16 easement;
- 17 (B) Placed in a manner that still allows vehicular
18 traffic to use the road; and
- 19 (C) Granted a special use permit by the commission
20 pursuant to section 205-6;



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 A, B, or C for which a special use permit is granted
5 pursuant to section 205-6[7] and this paragraph;
6 provided that:

7 (A) The area occupied by the solar energy facilities
8 is 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[7] or at a lease
12 rate that is at least sixty per cent below the
13 fair market lease rate for comparable properties
14 if the land is classified as overall (master)
15 productivity rating A;

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



1 (C) Solar energy facilities shall be decommissioned
2 at the owner's expense according to the following
3 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 prior to the development of the
11 solar energy facility[?]; and

12 (D) For lands with soil classified by the land study
13 bureau's detailed land classification as overall
14 (master) productivity rating class A, in addition
15 to the requirements set forth in subparagraphs
16 (A), (B), and (C):

17 (i) The land utilized by the solar energy
18 facilities shall be located within two miles
19 of a 138kV transmission line right of way
20 existing as of January 1, 2016;



- 1 (ii) The area directly impacted by the solar
2 energy facilities shall not be used for
3 solar energy purposes for more than thirty-
4 five years; provided that the thirty-five
5 year period may be extended upon approval by
6 the commission prior to the expiration of
7 the thirty-five year period;
- 8 (iii) The land utilized by the solar energy
9 facilities shall not be state-owned lands;
- 10 (iv) The operator of the solar energy facilities
11 that occupy the area shall provide water
12 infrastructure to any service area in which
13 agricultural production has been impacted by
14 the solar energy facilities;
- 15 (v) The area directly impacted by the solar
16 energy facilities shall be restored to its
17 original, pre-use condition prior to its
18 disposition, except that any agricultural
19 infrastructure in good working condition
20 need not be removed;



1 (vi) The commission shall hold a public hearing
2 regarding the applicable solar energy
3 facilities prior to construction of the
4 facilities; and

5 (vii) The land utilized by the solar energy
6 facility shall have one or more binding
7 contracts for agricultural activities for
8 the term that the land will be utilized by
9 the solar energy facility and the operator
10 of the solar energy facility shall provide
11 for the electrical needs of the party
12 engaged in agricultural activities under the
13 binding contracts;

14 (E) In making a determination on whether to grant a
15 special use permit for a solar facility on class
16 A land under section 205-6, the commission shall
17 consider and make specific findings as to
18 whether:

19 (i) Any agricultural activity that has been
20 undertaken on the land at the time of the
21 application or in the ten-year period



- 1 immediately preceding the application will
2 be enhanced or supported by the solar
3 facility;
- 4 (ii) Granting of the special permit will cause
5 fragmentation of available land for
6 agriculture;
- 7 (iii) The use of the land for a utility scale
8 solar facility is critical to furthering
9 state and county food security goals if the
10 special use permit is sought for a utility
11 scale solar facility;
- 12 (iv) The use of the land for a utility scale
13 solar facility will negatively impact
14 resiliency goals as set forth in state and
15 county plans if the special use permit is
16 sought for a utility scale solar facility;
17 and
- 18 (v) Construction of the solar facility will
19 adversely impact agricultural activities on
20 surrounding lands; and



1 (F) The aggregate area of the land impacted directly
2 by all utility scale solar energy facilities
3 located within lands with soil classified by the
4 land study bureau's detailed land classification
5 as overall (master) productivity rating class A
6 in each county shall not exceed one per cent of
7 the total lands in that county with soil
8 classified by the land study bureau's detailed
9 land classification as overall (master)
10 productivity rating class A.

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

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

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



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

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

8 "**§205-6 Special permit.** (a) Subject to this section, the
9 county planning commission may permit certain unusual and
10 reasonable uses within agricultural and rural districts other
11 than those for which the district is classified. Any person who
12 desires to use the person's land within an agricultural or rural
13 district other than for an agricultural or rural use, as the
14 case may be, may petition the planning commission of the county
15 within which the person's land is located for permission to use
16 the person's land in the manner desired. Each county may
17 establish the appropriate fee for processing the special permit
18 petition. Copies of the special permit petition shall be
19 forwarded to the land use commission, the office of planning,
20 and the department of agriculture for their review and comment.



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

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

18 (d) Special permits for land the area of which is greater
19 than fifteen acres, for the construction of a solar facility on
20 lands with soil classified by the land study bureau's detailed
21 land classification as overall (master) productivity rating



1 class A; or for lands designated as important agricultural lands
2 shall be subject to approval by the land use commission. The
3 land use commission may impose additional restrictions as may be
4 necessary or appropriate in granting the approval, including the
5 adherence to representations made by the 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) A special permit application for construction of a
14 utility scale solar facility on lands with soil classified by
15 the land study bureau's detailed land classification as overall
16 (master) productivity rating class A shall be reviewed by the
17 land use commission de novo for purposes of subsection (e) and
18 for purposes of appealing the county planning commission's
19 denial or restriction of the permit. Any party requesting a
20 special permit under this subsection may petition the commission



1 directly and without regard to subsections (a), (b), (c), and
2 (e)."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval;
6 provided that:

7 (1) The amendments made to section 205-4.5(a), Hawaii
8 Revised Statutes, by section 3 of this Act shall not
9 be repealed when that section is reenacted on June 30,
10 2019, by section 3(1) of Act 52, Session Laws of
11 Hawaii 2014; and

12 (2) This Act shall be repealed on June 30, 2025, and:

13 (A) Section 205-2(d), Hawaii Revised Statutes, shall
14 be reenacted in the form in which it read on the
15 day before the effective date of this Act; and

16 (B) Section 205-4.5(a), Hawaii Revised Statutes,
17 shall be reenacted in the form in which it read
18 on July 1, 2019.



Report Title:

Land Use; Utility Scale Solar Energy Development Projects;
Agricultural Districts

Description:

Authorizes the development of utility scale solar projects on
class A agricultural lands, subject to certain requirements.
Repeals 6/30/2025. (SD1)

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

