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Testimony of
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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