

JAN 23 2006

A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. The legislature finds that Hawaii is dependent
2 on imported oil for more than ninety-two per cent of its energy
3 needs, making it the most vulnerable state in the nation to
4 economic disruption in the event of upheavals in the world oil
5 market. Moreover, during periods of supply curtailment, the
6 State's need to ensure basic public emergency services to
7 safeguard public health, safety, and welfare, such as police and
8 fire protection, hospital and ambulance services, and utility
9 emergency services, competes with the need to maintain Hawaii's
10 economy and employment levels, not to mention the continued
11 operations of the State's transportation, commerce, industry,
12 construction, government, the military, and agriculture. Other
13 factors, including Hawaii's geographic isolation and lack of
14 overland access to energy sources, make the State unique in its
15 near total reliance on imported oil and vulnerability to supply
16 disruptions. The recent catastrophic events of Hurricane
17 Katrina underline the need for Hawaii to severely reduce its
18 dependence on foreign oil. The legislature's enactment of



1 wholesale gas price caps linked to Gulf Coast markets
2 demonstrates Hawaii's vulnerability to events that occur off our
3 island state.

4 State law already requires the State to establish policies
5 designed to increase energy self-sufficiency and energy
6 security, including the use of renewable resources. In
7 particular, section 226-18(a), Hawaii Revised Statutes, of the
8 Hawaii State Planning Act requires planning for the State's
9 facility systems with regard to energy to include "[i]ncreased
10 energy self-sufficiency where the ratio of indigenous to
11 imported energy use is increased" and "[g]reater energy security
12 in the face of threats to Hawaii's energy supplies and systems."
13 Similarly, section 226-103(f), Hawaii Revised Statutes,
14 establishes priority guidelines for energy use and development
15 to "[e]ncourage the development, demonstration, and
16 commercialization of renewable energy sources."

17 The legislature further finds that Hawaii is blessed with
18 an abundance of renewable energy resources, including wind,
19 solar, hydropower, geothermal resources, ocean thermal energy
20 conversion, and wave energy. In particular, Act 272, Session
21 Laws of Hawaii 2001, recognized "the economic, environmental,
22 and fuel diversity benefits of renewable energy resources" and



1 the need to "encourage the establishment of a market for
2 renewable energy in Hawaii using the State's renewable energy
3 resources." Act 272 further noted that "while Hawaii is a
4 national leader in the development of renewable energy resources
5 for electricity production, there may be more that the State can
6 do to encourage the development and implementation of renewable
7 energy. These efforts can reduce the amount of imported oil
8 used for the generation of electricity."

9 Accordingly, the purpose of this Act is to lessen Hawaii's
10 dependence on imported oil and encourage the greater use of
11 renewable energy by establishing "energy enterprise zones" to
12 accommodate wind farms and other indigenous and renewable energy
13 resources with a minimum of red tape, and for encouraging the
14 development of renewable energy resources.

15 SECTION 2. The Hawaii Revised Statutes is amended by
16 adding a new chapter to be appropriately designated and to read
17 as follows:

18 **"CHAPTER**

19 **ENERGY ENTERPRISE ZONES**

20 § -1 **Purpose.** The purpose of this chapter is to reduce
21 the State's dependence on imported oil and increase the State's



1 energy self-sufficiency by providing for the establishment of
2 energy enterprise zones.

3 § -2 Definitions. As used in this chapter:

4 "Department" means the department of business, economic
5 development, and tourism.

6 "Energy enterprise zone" means an area nominated by, and
7 within the jurisdiction of, a county government, and
8 subsequently declared by the department to be eligible for the
9 benefits of this chapter.

10 "Establishment" means a single physical location where
11 electric energy is generated. A qualified business may include
12 one or more establishments, any number of which may be in an
13 energy enterprise zone.

14 "Full-time employee" means any employee for whom the
15 employer is legally required to provide employee fringe
16 benefits.

17 "Nonutility generator" means a person that produces
18 electric power but is not an energy utility, including any
19 person who:

- 20 (1) Controls, operates, or manages plants or facilities
21 for the production, transmission, or furnishing of
22 power, whether in whole or in part, from any energy



1 source, including nonfossil fuel or renewable energy
2 sources; and

3 (2) Provides, sells, or transmits any or all of that
4 power, either directly or indirectly to an energy
5 utility for transmission to the public.

6 "Qualified business" means any nonutility generator that
7 is:

8 (1) Authorized to do business in this State; and

9 (2) Is engaged in producing electric power from:

10 (A) Wind energy;

11 (B) Solar energy;

12 (C) Hydropower;

13 (D) Landfill gas;

14 (E) Waste to energy;

15 (F) Geothermal resources;

16 (G) Ocean thermal energy conversion;

17 (H) Wave energy;

18 (I) Biomass, including municipal solid waste;

19 (J) Biofuels or fuels derived entirely from organic
20 sources;

21 (K) Hydrogen fuels derived entirely from renewable
22 energy; or



1 (L) Fuel cells where the fuel is derived entirely
2 from renewable sources;
3 for sale primarily to an energy utility for resale to
4 the public.

5 "Taxes due the State" means income taxes due under chapter
6 235.

7 § -3 **Administration.** The department shall administer
8 this chapter and shall have the following powers and duties:

- 9 (1) To establish criteria for determining what areas
10 qualify as energy enterprise zones. The criteria
11 shall be the minimum required for implementation of
12 the purpose of this chapter;
- 13 (2) To monitor the implementation and operation of this
14 chapter;
- 15 (3) To conduct a continuing evaluation program of energy
16 enterprise zones;
- 17 (4) To assist counties in obtaining the reduction of rules
18 within energy enterprise zones;
- 19 (5) To submit annual reports evaluating the effectiveness
20 of the program and any recommendations for legislation
21 to the legislature and the governor;



1 (6) To administer and enforce the rules adopted by the
2 department; and

3 (7) To administer this chapter in such a manner that the
4 area to be designated as an energy enterprise zone
5 will most benefit the area and the State.

6 § -4 **Energy enterprise zone designation.** (a) The
7 governing body of any county may apply in writing to the
8 department to have an area declared to be an energy enterprise
9 zone. The application shall include a description of the
10 location of the area or areas in question, and a general
11 statement identifying proposed local incentives to complement
12 the state and any federal incentives.

13 (b) The department shall approve the designation of up to
14 twenty areas in each county as energy enterprise zones for a
15 period of twenty years. The department shall adopt rules
16 setting forth appropriate standards for the designation of
17 energy enterprise zones.

18 § -5 **Application review.** (a) The department shall
19 review each application upon receipt and shall secure any
20 additional information that the department deems necessary for
21 the purpose of determining whether the area described in the
22 application qualifies to be declared an energy enterprise zone.



1 (b) The department shall complete review of the
2 application within sixty days of the last date designated for
3 receipt of an application. After review of the applications,
4 the department shall approve in writing those applications
5 having the greatest potential for accomplishing the purposes of
6 this chapter. If an application is denied, the department shall
7 inform the governing body in writing of that fact together with
8 the reasons for the denial.

9 § -6 **Government assistance; prohibition.** There shall be
10 no duplication of existing state tax incentives to qualified
11 businesses that locate in an energy enterprise zone.

12 § -7 **Rules.** The department, in consultation with the
13 department of taxation, shall adopt rules pursuant to chapter 91
14 to implement this chapter, including rules relating to health,
15 safety, building, planning, zoning, and land use which shall
16 supersede all other inconsistent ordinances and rules relating
17 to the use, zoning, planning, and development of land and
18 construction in an energy enterprise zone. Rules adopted under
19 this section shall follow existing law, rules, and ordinances as
20 closely as is consistent with standards meeting minimum
21 requirements of energy efficiency, health, and safety. The
22 department may provide by rule that lands within an energy



1 enterprise zone shall not be developed beyond existing uses or
 2 that improvements thereon shall not be demolished or
 3 substantially reconstructed, or provide other restrictions on
 4 the use of the zone.

5 **§ -8 Eligibility; qualified business; sale of property**

6 **or services.** (a) Any nonutility generator may be eligible to
 7 be designated a qualified business for purposes of this chapter
 8 if the nonutility generator:

9 (1) Begins the operation of a nonutility generator within
 10 an energy enterprise zone;

11 (2) During each taxable year has at least per cent
 12 of its energy enterprise zone establishment's gross
 13 receipts attributable to the active production of
 14 electric power within the energy enterprise zone;

15 (3) Increases its average annual number of full-time
 16 employees by at least per cent by the end of its
 17 first tax year of participation; and

18 (4) During each subsequent taxable year at least maintains
 19 that higher level of employment.

20 (b) A nonutility generator also may be eligible to be
 21 designated a qualified business for purposes of this chapter if
 22 the nonutility generator:

1 (1) Is actively engaged in producing electric power in an
2 area immediately prior to an area being designated an
3 energy enterprise zone;

4 (2) Meets the requirements of subsection (a)(2); and

5 (3) Increases its average annual number of full-time
6 employees employed at the nonutility generator's
7 establishment or establishments located within the
8 energy enterprise zone by at least per cent
9 annually.

10 (c) After designation as an energy enterprise zone, each
11 qualified business in the zone shall submit annually to the
12 department an approved form supplied by the department that
13 provides the information necessary for the department to
14 determine if the nonutility generator qualifies as a qualified
15 business. The approved form shall be submitted by each business
16 to the governing body of the county in which the energy
17 enterprise zone is located, then forwarded to the department by
18 the governing body of the county.

19 (d) The form referred to in subsection (c) shall be prima
20 facie evidence of the eligibility of a nonutility generator for
21 the purposes of this section.



1 (e) Any electric power produced by a nonutility generator
2 outside of an energy enterprise zone shall not be included in
3 the determination of gross receipts attributable to the active
4 production of electric power under subsection (a)(2).

5 § -9 State business tax credit. (a) The department
6 shall certify annually to the department of taxation the
7 applicability of the tax credit provided in this chapter for a
8 qualified business against any taxes due the State. Except for
9 the general excise tax, the credit shall be:

- 10 (1) Eighty per cent of the tax due for the first tax year;
- 11 (2) Seventy per cent of the tax due for the second tax
12 year;
- 13 (3) Sixty per cent of the tax due for the third year;
- 14 (4) Fifty per cent of the tax due the fourth year;
- 15 (5) Forty per cent of the tax due the fifth year;
- 16 (6) Thirty per cent of the tax due the sixth year; and
- 17 (7) Twenty per cent of the tax due the seventh year.

18 Any tax credit not usable shall not be applied to future tax
19 years.

20 (b) When a partnership is eligible for a tax credit under
21 this section, each partner shall be eligible for the tax credit
22 provided for in this section on the partner's income tax return



1 in proportion to the amount of income received by the partner
2 from the partnership. Any qualified business having taxable
3 income from the production of electric power, both within and
4 without the energy enterprise zone, shall allocate and apportion
5 its taxable income attributable to that production. Tax credits
6 provided for in this section shall only apply to taxable income
7 of a qualified business attributable to the production of
8 electric power within the energy enterprise zone.

9 (c) In addition to any tax credit authorized under this
10 section, any qualified business shall be entitled to a tax
11 credit against any taxes due the State in an amount equal to a
12 percentage of unemployment taxes paid. The amount of the credit
13 shall be equal to:

- 14 (1) Eighty per cent of the unemployment taxes paid during
15 the first year;
- 16 (2) Seventy per cent of the taxes paid during the second
17 year;
- 18 (3) Sixty per cent of the taxes paid during the third
19 year;
- 20 (4) Fifty per cent of the taxes paid during the fourth
21 year;



1 (5) Forty per cent of the taxes paid during the fifth
2 year;

3 (6) Thirty per cent of the taxes paid during the sixth
4 year; and

5 (7) Twenty per cent of the taxes paid during the seventh
6 year.

7 (d) Tax credits provided for in subsection (c) shall only
8 apply to the unemployment tax paid on employees employed at the
9 qualified business' establishment or establishments located
10 within the energy enterprise zone. Any tax credit not usable
11 shall not be applied to future tax years.

12 § -10 State general excise and use tax exemptions. The
13 department shall certify annually to the department of taxation
14 that any qualified business is exempt from the payment of
15 general excise taxes on the gross proceeds from the sale of
16 electric power to an energy utility for resale to the public.
17 The department shall also certify annually to the department of
18 taxation that any qualified business is exempt from the use tax
19 for purchases by the qualified business. The gross proceeds
20 received by a contractor licensed under chapter 444 shall be
21 exempt from the general excise tax for construction within an
22 energy enterprise zone performed for a qualified business within



1 an energy enterprise zone. The exemption shall extend for a
2 period not to exceed seven years.

3 § -11 **Local incentives.** (a) In applying for
4 designation as an energy enterprise zone, the applying county
5 may propose local incentives, including:

- 6 (1) Reduction of permit fees;
- 7 (2) Reduction of user fees; and
- 8 (3) Reduction of real property taxes.

9 (b) The application also may contain proposals for
10 regulatory flexibility, including, but not limited to:

- 11 (1) Special zoning districts;
- 12 (2) Permit process reform;
- 13 (3) Exemptions from local ordinances; and
- 14 (4) Other public incentives proposed in the locality's
15 application, which shall be binding upon the locality
16 upon designation of the energy enterprise zone.

17 § -12 **Termination of energy enterprise zone.** Upon
18 designation of an area as an energy enterprise zone, the
19 proposals for regulatory flexibility, tax incentives, and other
20 public incentives specified in this chapter shall be binding
21 upon the county governing body to the extent and for the period
22 of time specified in the application for zone designation. If



1 the county governing body is unable or unwilling to provide any
2 of the incentives set forth in section -11 or other
3 incentives acceptable to the department, and the department has
4 not adopted rules pursuant to section -7 that supersede
5 inconsistent ordinances and rules relating to the use, zoning,
6 planning, and development of land and construction in an energy
7 enterprise zone, then the energy enterprise zone shall
8 terminate. Qualified businesses located in the energy
9 enterprise zone shall be eligible to receive the state tax
10 incentives provided by this chapter even though the zone
11 designation has terminated. No nonutility generator may become
12 a qualified business after the date of zone termination. The
13 county governing body may amend its application with the
14 approval of the department; provided that the county governing
15 body proposes an incentive equal to or superior to the unamended
16 application.

17 SECTION 3. It is the intent of this Act not to jeopardize
18 the receipt of any federal aid nor to impair the obligation of
19 the State or any agency thereof to the holders of any bond
20 issued by the State or by any such agency, and to the extent,
21 and only to the extent, necessary to effectuate this intent, the
22 governor may modify the strict provisions of this Act, but shall



1 promptly report any such modification with reasons therefor to
2 the legislature at its next session thereafter for review by the
3 legislature.

4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

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

13 SECTION 6. This Act shall take effect upon approval.

INTRODUCED BY:

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SB2127

Report Title:

Hawaii Energy Enterprise Zones

Description:

Establishes energy enterprise zones to encourage the development of renewable energy resources.

SB SMO 06-041

