



1 "County permit" means a permit that is subject to approval  
2 by a county agency pursuant to federal, state, or county law.

3 "Energy resources coordinator" or "coordinator" means the  
4 energy resources coordinator designated under section 196-3.

5 "Inter-island renewable energy facility" or "facility"  
6 means a facility located on an island of the State that produces  
7 electricity from renewable energy for transmission through  
8 undersea cable to another island of the State. The term  
9 includes any of the following associated with the facility:

- 10 (1) The land parcel on which the facility is situated;
- 11 (2) Any renewable energy production structure or  
12 equipment;
- 13 (3) The undersea cable and its land route and origination  
14 and destination sites;
- 15 (4) Any electricity transmission line connecting the  
16 destination site by an undersea cable to a public  
17 utility's electricity distribution system;
- 18 (5) Any on-site infrastructure; and
- 19 (6) Any on-site building, structure, other improvement, or  
20 equipment necessary for the production of electricity  
21 from the renewable energy site, transmission of the



1 electricity through an undersea cable, or any  
2 accommodation for employees of the facility.

3 "Permit":

4 (1) Means any approval, no matter the nomenclature,  
5 necessary for the siting, development, construction,  
6 or operation of an inter-island renewable energy  
7 facility; except that the term shall not include the  
8 following:

9 (A) Acceptance by an accepting authority of an  
10 environmental impact statement on a facility;

11 (B) Issuance by a county agency of a building or  
12 grading permit; or

13 (C) Approval by the public utilities commission of a  
14 power purchase agreement between an inter-island  
15 renewable energy facility owner and a public  
16 utility.

17 (2) Includes:

18 (A) A state land use reclassification;

19 (B) A county development, community, or community  
20 development plan amendment;

21 (C) A county zoning map amendment;

22 (D) A state conservation district use permit;



- 1 (E) A state special permit for an agricultural or
- 2 rural district;
- 3 (F) A special management area permit;
- 4 (G) A shoreline setback variance; and
- 5 (H) A grant of an easement on state or county real
- 6 property.

7 "Power purchase agreement" means an agreement between an  
8 inter-island renewable energy facility owner and a public  
9 utility on the rate payable by the public utility for renewable  
10 energy generated electricity produced by the facility.

11 "Renewable energy" has the same meaning as that term is  
12 defined under section 269-91.

13 "State agency" means a department, division, office,  
14 officer, agency, or other organization of the state government,  
15 but not the legislature.

16 "State law" means a state constitutional provision,  
17 statute, or administrative rule.

18 "State permit" means a permit that is subject to the  
19 approval of a state agency pursuant to federal or state law.

20 § -2 **Staff and contractor; energy resources coordinator**  
21 **for inter-island renewable energy facility siting process.** (a)

22 The energy resources coordinator may employ and dismiss staff



1 without regard to chapters 76 and 89 to assist the coordinator  
2 in the implementation of this chapter. The salary of each staff  
3 member shall be set by the coordinator. Each staff member shall  
4 be entitled to participate in any public employee benefit  
5 program plan or privilege.

6 The coordinator may also contract persons to assist the  
7 coordinator in the implementation of this chapter.

8 § -3 **General duties of the coordinator.** The coordinator  
9 shall:

- 10 (1) Accept a consolidated application, in a form as the  
11 coordinator shall prescribe, for the approval of the  
12 siting, development, construction, and operation of an  
13 inter-island renewable energy facility;
- 14 (2) Identify all state and county permits necessary for  
15 approval of the facility;
- 16 (3) Gather from the applicant any information the  
17 coordinator finds relevant and necessary to review,  
18 process, and make a decision on the permits; and
- 19 (4) Work with other federal, state, and county agencies  
20 and the applicant to determine the terms and  
21 conditions of the permits that are necessary to



1 effectuate this chapter and to protect the public  
2 health and safety and promote the general welfare.

3 § -4 Consolidated application; pre-application

4 conference; public notice of receipt of application. (a) The  
5 coordinator shall establish a consolidated application and  
6 require the applicant to pay a fee with the consolidated  
7 application. The coordinator shall set the fee at an amount  
8 sufficient to cover the costs and expenses of the coordinator,  
9 coordinator's staff and contractor, and relevant state and  
10 county agencies to provide input and advice on the state and  
11 county permits necessary for the facility. Upon collection of  
12 the fee or periodically thereafter, the coordinator shall  
13 transmit to each relevant state or county agency the portion of  
14 the fee that reflects the cost to that state or county agency  
15 for providing its input and advice.

16 (b) Before accepting a consolidated application, the  
17 coordinator may hold a pre-application conference with the  
18 prospective applicant to discuss all the state and county  
19 permits necessary for the facility and notify the prospective  
20 applicant of the information to submit with the consolidated  
21 application.



1 (c) Within ten days of receipt of a consolidated  
2 application, the coordinator shall publish a public notice of  
3 receipt of the application in a statewide publication. The  
4 public notice shall set forth the following:

5 (1) The name of the applicant;

6 (2) The location of the proposed inter-island renewable  
7 energy facility and route of the undersea cable;

8 (3) A summarized description of the facility;

9 (4) The state and county permits required for the  
10 facility; and

11 (5) Any other information deemed necessary or desirable by  
12 the coordinator.

13 § -5 **Approval of state permits.** (a) When the  
14 coordinator receives an application for an inter-island  
15 renewable energy facility that requires state permits, the  
16 coordinator, after consultation with relevant federal, state,  
17 and county agencies, shall determine the terms and conditions to  
18 be imposed on the state permits in order to protect the public  
19 health and safety and promote the general welfare. The terms  
20 and conditions may include requirements for the applicant to  
21 improve off-site infrastructure or establish measures to  
22 mitigate significant adverse environmental effects.



1           The coordinator shall make the determination for all terms  
2 and conditions of all required state permits no later than sixty  
3 days after the public has been informed pursuant to section 343-  
4 3 of the acceptance of the final environmental impact statement  
5 for the facility; provided that, if an approval for a federal  
6 permit is a prerequisite to the approval of a state permit  
7 required for the facility, the coordinator shall not make any  
8 determination until the federal permit is approved.

9           (b) Upon determining the necessary terms and conditions  
10 under subsection (a), the coordinator, on behalf of the relevant  
11 state agencies, shall approve the permits with those terms and  
12 conditions. The approval shall take effect on the sixty-first  
13 day after the public has been informed pursuant to section 343-3  
14 of the acceptance of the final environmental impact statement  
15 for the facility. If, however, a judicial proceeding has been  
16 timely brought under section 343-7(c) regarding the acceptance  
17 of the statement, the permits shall be subject to the order  
18 entered with the final judicial decision on the dispute. The  
19 coordinator may publish the coordinator's approval of all state  
20 permits in one consolidated document.

21           If a statement of finding is required by an applicable  
22 state law as a condition for approval of a particular state





1 permit, the coordinator shall issue the statement to accompany  
2 the permit. For the purpose of this chapter, a statement of  
3 finding shall be deemed a "condition" of the permit.

4 (c) Notwithstanding the approval of a state permit by the  
5 coordinator, the state agency on whose behalf the permit was  
6 approved shall be responsible for monitoring and enforcing the  
7 terms and conditions of the permit.

8 § -6 **Recommendation for approval of county permits;**

9 **approval of county permits.** (a) When the coordinator receives  
10 an application for an inter-island renewable energy facility  
11 that requires county permits, the coordinator, after  
12 consultation with relevant federal, state, and county agencies,  
13 shall determine the terms and conditions to be imposed on the  
14 county permits in order to protect the public health and safety  
15 and promote the general welfare. The terms and conditions may  
16 include requirements for the applicant to improve off-site  
17 infrastructure or establish measures to mitigate significant  
18 adverse environmental effects.

19 The coordinator shall make the determination for all county  
20 permits at the same time the determination is made for state  
21 permits under section -5(a).



1 (b) Upon making the determination under subsection (a),  
2 the coordinator shall recommend to the relevant county agencies  
3 that they approve the county permits with the recommended terms  
4 and conditions.

5 If a statement of findings is required by the applicable  
6 county law as a condition for approval of a particular county  
7 permit, the coordinator shall issue the statement to accompany  
8 the permit. For the purpose of this chapter, a statement of  
9 findings shall be deemed a "condition" of the permit.

10 (c) Within forty-five days of receipt of the  
11 recommendation from the coordinator, each relevant county agency  
12 may approve the county permit under its jurisdiction with the  
13 terms and conditions as recommended by the coordinator or  
14 amended by the county agency. The county agency may charge the  
15 applicant a fee for reviewing and acting on the permit.

16 (d) If, within forty-five days of receipt of a  
17 recommendation from the coordinator, a county agency does not  
18 approve the permit, either because of rejection or inaction, the  
19 permit with the terms and conditions recommended by the  
20 coordinator shall be deemed approved on the forty-sixth day  
21 without necessity of further action by the county agency or  
22 coordinator.



1 (e) If, within the forty-five-day period, the county  
2 agency approves the permit, but with amendments to any of the  
3 terms and conditions recommended by the coordinator, the county  
4 agency shall notify the coordinator within three days of the  
5 approval. If the notification is not provided to the  
6 coordinator within the three-day period, the county agency shall  
7 be deemed not to have approved the permit within the forty-five-  
8 day period, and the permit shall be deemed approved with the  
9 recommended terms and conditions in accordance with subsection  
10 (d).

11 The coordinator shall have ten days after receipt of the  
12 notification from the county agency to determine whether to  
13 accept or reject the amended terms and conditions. If the  
14 coordinator accepts all amended terms and conditions, the  
15 coordinator shall approve the county permit with the amended  
16 terms and conditions. If the coordinator rejects all or some of  
17 the amended terms and conditions, the coordinator shall approve  
18 the county permit with terms and conditions that exclude the  
19 rejected amendments. The coordinator shall issue the decision  
20 in writing. If the coordinator does not issue a written  
21 decision within the ten-day period, the county permit with terms  
22 and conditions as amended by the county agency shall be deemed



1 approved on the eleventh day without necessity of further action  
2 by the county agency or coordinator.

3 (f) Notwithstanding the action by the coordinator on a  
4 county permit approved pursuant to this subsection, the relevant  
5 county agency shall be responsible for monitoring and enforcing  
6 the terms and conditions of the permit.

7 § -7 **Coordination with federal permits.** The coordinator  
8 shall establish a system to coordinate the approval of required  
9 federal permits with state and county permits. The system shall  
10 include a process for coordinating the federal environmental  
11 impact statement process with the state environmental impact  
12 statement process. The coordinator may convene an interagency  
13 working group for this purpose.

14 § -8 **Public hearing by coordinator.** (a) If a federal,  
15 state, or county law requires a state or county agency to hold a  
16 public hearing on a particular permit application before making  
17 a decision on the permit, the coordinator shall hold the public  
18 hearing in place of the state or county agency; provided that  
19 the state or county agency shall not be required to hold the  
20 public hearing unless required to do so by federal law. To the  
21 extent practicable, the coordinator shall hold one consolidated



1 public hearing to cover all permit applications and required  
2 public hearings.

3 (b) Nothing in this section shall prevent a county agency  
4 from voluntarily holding a public hearing on a county permit  
5 after the coordinator submits to the county agency a  
6 recommendation on that permit pursuant to section -6. If a  
7 county agency voluntarily holds a public hearing on a county  
8 permit, it shall do so within the forty-five-day period provided  
9 for review and action on the permit.

10 § -9 **Land use, zoning, building, and construction status**  
11 **of inter-island renewable energy facility; state and county**  
12 **permits.** (a) An inter-island renewable energy facility, all  
13 necessary state and county permits for which have been approved  
14 under this chapter, shall be deemed a permitted principal use on  
15 the land parcel upon which it is situated. The land use  
16 commission, department of land and natural resources, and the  
17 relevant county shall revise any state land use district map and  
18 county zoning map appropriately to reflect this status.

19 (b) The final plans and specifications of the inter-island  
20 renewable energy facility, as set forth in the relevant state  
21 and county permits approved pursuant to this chapter, shall be  
22 deemed to constitute the zoning, building, and construction



1 standards for the facility and the land parcel upon which it is  
2 situated.

3 For the purpose of applicable state and county law:

4 (1) The facility shall be deemed a conforming use; and

5 (2) Any building or structure associated with or related  
6 to a facility shall be deemed a conforming building or  
7 structure.

8 (c) Nothing in this section shall be deemed to prohibit  
9 the amendment of the state land use classification, county  
10 zoning map, or other zoning, building, or construction standard  
11 with respect to facilities approved under this chapter. Any  
12 amendment, if made, shall be accomplished in accordance with  
13 applicable state or county law; except that no amendment shall  
14 remove the conforming status conferred under subsection (b) with  
15 respect to any facility or any associated building or structure.

16 § -10 **Environmental impact review process;**

17 **applicability.** (a) Chapter 343 shall apply to an inter-island  
18 renewable energy facility, a consolidated application for which  
19 is submitted to the coordinator under this chapter.

20 (b) Nothing in this chapter or chapter 343 shall prohibit  
21 the review and processing by the coordinator of applications for  
22 permits for an inter-island renewable energy facility



1 concurrently with the preparation and processing by the  
2 applicant of an environmental impact statement for the facility.  
3 To accomplish the concurrent review, the coordinator may consent  
4 to the receipt and review of portions of a draft of an  
5 environmental impact statement before its completion.

6       **§ -11 Power purchase agreement; inapplicability of**  
7 **chapter.** A power purchase agreement between an inter-island  
8 renewable energy facility owner and a public utility shall not  
9 be a "permit" subject to approval by the coordinator. Any power  
10 purchase agreement shall be subject to the applicable provisions  
11 of chapter 269.

12       **§ -12 Building or grading permit required from county.**  
13 A grading or building permit issued by the applicable county  
14 shall be required to grade a site or construct a structure for  
15 an inter-island renewable energy facility. The applicable  
16 county shall establish an expedited process for review and  
17 issuance of all required permits. Under the process, the county  
18 may contract with a third party to conduct the review of the  
19 permit application and require the applicant for the permit to  
20 pay the cost incurred for the third party review.

21       **§ -13 Judicial review of dispute regarding approved**  
22 **permit; inapplicability of contested case procedures.** (a) Any



1 person aggrieved by the approval of a state or county permit or  
2 term or condition of any approved permit may file an action for  
3 relief in the circuit court.

4 (b) The inapplicability of the use of contested case  
5 procedures pursuant to chapter 91 in the approval of any state  
6 or county permit pursuant to this chapter shall not be grounds  
7 for any judicial appeal.

8 § -14 **Inapplicability of maximum time period rule**  
9 **requirement.** Section 91-13.5 shall not apply to the  
10 coordinator. The deadlines for review and action upon a  
11 consolidated application for an inter-island renewable energy  
12 facility shall be subject to this chapter.

13 § -15 **Rules.** (a) The coordinator may adopt interim  
14 rules to implement this chapter without regard to the notice and  
15 public hearing requirements of section 91-3 or the small  
16 business impact review requirements of chapter 201M.

17 (b) Any amendment of the interim rules shall be subject to  
18 all provisions of chapters 91 and 201M.

19 § -16 **Superiority of chapter over conflicting state or**  
20 **county law.** The provisions of this chapter shall supersede any  
21 conflicting state or county law."





1 SECTION 3. Section 91-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "contested case" to read  
3 as follows:

4 "(5) "Contested case" means a proceeding in which the legal  
5 rights, duties, or privileges of specific parties are  
6 required by law to be determined after an opportunity  
7 for agency hearing. The term does not apply to the  
8 review, processing, or approval of state or county  
9 permits for an inter-island renewable energy facility  
10 under chapter \_\_\_\_\_."

11 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

13 "(c) The rate payable by the public utility to the  
14 producer for the nonfossil fuel generated electricity supplied  
15 to the public utility shall be as agreed between the public  
16 utility and the supplier and as approved by the public utilities  
17 commission; provided that in the event the public utility and  
18 the supplier fail to reach an agreement for a rate, the rate  
19 shall be as prescribed by the public utilities commission,  
20 according to the powers and procedures provided in this chapter.

21 In the exercise of its authority to determine the just and  
22 reasonable rate for the nonfossil fuel generated electricity



1 supplied to the public utility by the producer, the commission  
2 shall establish that the rate for purchase of electricity by a  
3 public utility shall not be more than one hundred per cent of  
4 the cost avoided by the utility when the utility purchases the  
5 electrical energy rather than producing the electrical energy.

6 The commission's determination of the just and reasonable  
7 rate shall be accomplished by establishing a methodology that  
8 removes or significantly reduces any linkage between the price  
9 of fossil fuels and the rate for the nonfossil fuel generated  
10 electricity to potentially enable utility customers to share in  
11 the benefits of fuel cost savings resulting from the use of  
12 nonfossil fuel generated electricity. As the commission deems  
13 appropriate, the just and reasonable rate for nonfossil fuel  
14 generated electricity supplied to the public utility by the  
15 producer may include mechanisms for reasonable and appropriate  
16 incremental adjustments, such as adjustments linked to consumer  
17 price indices for inflation or other acceptable adjustment  
18 mechanisms.

19 When an application is submitted to the commission for the  
20 approval of a rate agreement for nonfossil fuel generated  
21 electricity between an inter-island renewable energy facility  
22 owner and a public utility under chapter , the commission



1 shall approve, approve with modification, or reject the  
2 application within thirty days of receipt. If the commission  
3 does not approve, approve with modification, or reject the  
4 proposed rate agreement within the thirty-day period, the rate  
5 agreement as submitted shall be deemed approved on the thirty-  
6 first day.

7 When an inter-island renewable energy facility owner and a  
8 public utility fail to reach an agreement on the rate payable  
9 for nonfossil fuel generated electricity, either party may  
10 request the commission to prescribe a just and reasonable rate.  
11 The commission shall prescribe the rate within thirty days of  
12 receipt of the request. If the commission does not prescribe  
13 the rate within the thirty-day period, the rate last proposed by  
14 the inter-island renewable energy facility owner shall be deemed  
15 the rate prescribed. That rate shall be effective on the first  
16 day after the thirty-day period.

17 For the purpose of this section, "inter-island renewable  
18 energy facility owner" means the owner or authorized agent of  
19 the owner of an inter-island renewable energy facility as  
20 defined in section -1."

21 SECTION 5. Section 343-2, Hawaii Revised Statutes, is  
22 amended by adding a new definition of "inter-island renewable



1 energy facility" to be appropriately inserted and to read as  
2 follows:

3 "Inter-island renewable energy facility" has the same  
4 meaning as that term is defined in section -1."

5 SECTION 6. Section 343-5, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7 "(c) Whenever an applicant proposes an action specified by  
8 subsection (a) that requires approval of an agency and that is  
9 not a specific type of action declared exempt under section 343-  
10 6, the agency initially receiving and agreeing to process the  
11 request for approval shall prepare an environmental assessment  
12 of the proposed action at the earliest practicable time to  
13 determine whether an environmental impact statement shall be  
14 required[-]; provided that for an action that proposes the  
15 establishment of an inter-island renewable energy facility, a  
16 draft environmental impact statement shall be prepared at the  
17 earliest practicable time. The final approving agency for the  
18 request for approval is not required to be the accepting  
19 authority.

20 For environmental assessments for which a finding of no  
21 significant impact is anticipated:



1 (1) A draft environmental assessment shall be made  
2 available for public review and comment for a period  
3 of thirty days;

4 (2) The office shall inform the public of the availability  
5 of the draft environmental assessment for public  
6 review and comment pursuant to section 343-3;

7 (3) The applicant shall respond in writing to comments  
8 received during the review, and the agency shall  
9 prepare a final environmental assessment to determine  
10 whether an environmental impact statement shall be  
11 required. A statement shall be required if the agency  
12 finds that the proposed action may have a significant  
13 effect on the environment.

14 The agency shall file notice of the agency's  
15 determination with the office, which, in turn, shall  
16 publish the agency's determination for the public's  
17 information pursuant to section 343-3.

18 The draft and final statements, if required, shall be  
19 prepared by the applicant, who shall file these statements with  
20 the office.

21 The draft statement shall be made available for public  
22 review and comment through the office for a period of forty-five



1 days. The office shall inform the public of the availability of  
2 the draft statement for public review and comment pursuant to  
3 section 343-3.

4 The applicant shall respond in writing to comments received  
5 during the review and prepare a final statement. The office,  
6 when requested by the applicant or agency, may make a  
7 recommendation as to the acceptability of the final statement.

8 The authority to accept a final statement shall rest with  
9 the agency initially receiving and agreeing to process the  
10 request for approval. The final decision-making body or  
11 approving agency for the request for approval is not required to  
12 be the accepting authority. The planning department for the  
13 county in which the proposed action will occur shall be a  
14 permissible accepting authority for the final statement. For an  
15 inter-island renewable energy facility, the energy resources  
16 coordinator under chapter shall be the accepting authority.

17 Acceptance of a required final statement shall be a  
18 condition precedent to approval of the request and commencement  
19 of the proposed action. Upon acceptance or nonacceptance of the  
20 final statement, the agency shall file notice of such  
21 determination with the office. The office, in turn, shall



1 publish the determination of acceptance or nonacceptance of the  
2 final statement pursuant to section 343-3.

3       The agency receiving the request, within thirty days of  
4 receipt of the final statement, shall notify the applicant and  
5 the office of the acceptance or nonacceptance of the final  
6 statement. The final statement shall be deemed to be accepted  
7 if the agency fails to accept or not accept the final statement  
8 within thirty days after receipt of the final statement;  
9 provided that the thirty-day period may be extended at the  
10 request of the applicant for a period not to exceed fifteen  
11 days.

12       In any acceptance or nonacceptance, the agency shall  
13 provide the applicant with the specific findings and reasons for  
14 its determination. An applicant, within sixty days after  
15 nonacceptance of a final statement by an agency, may appeal the  
16 nonacceptance to the environmental council, which, within thirty  
17 days of receipt of the appeal, shall notify the applicant of the  
18 council's determination. In any affirmation or reversal of an  
19 appealed nonacceptance, the council shall provide the applicant  
20 and agency with specific findings and reasons for its  
21 determination. The agency shall abide by the council's  
22 decision."



1 SECTION 7. Chapter 196D, Hawaii Revised Statutes, is  
2 repealed.

3 SECTION 8. If a prospective developer of an inter-island  
4 renewable energy facility has submitted an application for a  
5 state or county permit necessary for the siting, development,  
6 construction, or operation of the facility before July 1, 2008,  
7 the prospective developer may:

8 (1) Request the relevant state or county agency to proceed  
9 with reviewing, processing, and acting upon the permit  
10 application; or

11 (2) Withdraw the permit application and submit a  
12 consolidated application with the energy resources  
13 coordinator pursuant to chapter , Hawaii Revised  
14 Statutes, in section 2 of this Act; provided that if  
15 the prospective developer chooses to submit a  
16 consolidated application, the relevant state or county  
17 agency shall transmit to the coordinator all documents  
18 applicable to the withdrawn permit application, except  
19 those that the agency finds are internal work products  
20 that may expose the agency to liability if released.

21 If the prospective developer has submitted two or more  
22 permit applications with state or county agencies before July 1,





1 2008, the prospective developer may select the action under  
2 paragraph (1) for some applications and the action under  
3 paragraph (2) for other applications.

4 A draft or final environmental impact statement under  
5 preparation by a prospective developer for a state or county  
6 permit application submitted before July 1, 2008 may be used for  
7 a consolidated application submitted to the coordinator. The  
8 prospective developer shall not be required to begin the  
9 environmental impact statement process anew if withdrawing the  
10 permit application and submitting a consolidated application.

11 SECTION 9. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$ or so much  
13 thereof as may be necessary for fiscal year 2008-2009 for the  
14 establishment and operation of the inter-island renewable energy  
15 facility siting process established under this Act.

16 The sum appropriated shall be expended by the department of  
17 business, economic development, and tourism for the purposes of  
18 this Act.

19 SECTION 10. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.





**Report Title:**

Renewable Energy

**Description:**

Establishes an inter-island renewable energy facility siting process to expedite the review and action upon state and county permits necessary for the siting, development, construction, and operation of a renewable energy facility.

