
A BILL FOR AN ACT

RELATING TO WIND ENERGY.

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

1 SECTION 1. Renewable energy resources offer Hawaii
2 important economic, environmental, and energy security benefits,
3 especially since Hawaii's dependency on petroleum is the highest
4 in the nation, accounting for approximately 90 per cent of the
5 state's energy needs. This high petroleum dependency makes
6 Hawaii consumers extremely vulnerable to any oil embargo, supply
7 disruption, international market dysfunction, and many other
8 factors beyond Hawaii's control.

9 Recognizing the importance and economic and environmental
10 benefits of increasing energy self-sufficiency, over the past
11 four years, the legislature and the department of business,
12 economic development, and tourism have committed to energy
13 objectives geared toward achieving dependable, efficient, and
14 economical statewide energy systems, increased self-sufficiency,
15 greater energy security, and reduction of greenhouse gas
16 emissions.

17 Act 272, Session Laws of Hawaii 2001, recognized the
18 economic, environmental, and fuel diversity benefits of



1 renewable energy resources and the need to encourage the
2 establishment of a market for renewable energy in Hawaii using
3 the state's renewable energy resources. Act 240, Session Laws
4 of Hawaii 2006, provided a framework for energy self-
5 sufficiency. The State has also committed to a renewable energy
6 standard, where 20 per cent of electricity sold will be
7 generated from renewable resources by the end of 2020 and has
8 sought to encourage private sector development of renewable
9 energy projects.

10 However, renewable energy projects are often complex,
11 large-scale undertakings requiring a number of permits. The
12 process for obtaining the necessary permits for renewable energy
13 projects and developments and the process for meeting state,
14 county, and federal regulations has for decades been described
15 as overly time-consuming, cumbersome, onerous, and costly. In
16 fact, the "Hawaii Integrated Energy Policy Report" of 1991 found
17 that the permit and approval process required for the
18 development and siting of energy facilities for a single project
19 can take up to seven years to complete. Thus, the inefficiency
20 of the permitting and development process acts as a barrier to
21 meeting Hawaii's renewable energy goals.



1 Understanding that renewable energy projects can provide
2 substantial and long-term benefits to the state and that
3 development of renewable energy projects would further state
4 policies of developing indigenous renewable energy resources and
5 decreasing Hawaii's dependency on imported fossil fuels, the
6 legislature finds that there is a need to streamline the
7 permitting process to provide predictability and to encourage
8 private companies to commit substantial amounts of capital,
9 time, and effort necessary to develop such projects.

10 The purpose of this Act is to improve the permitting
11 process required for the development of a wind energy project
12 that would use an undersea cable to transmit electricity between
13 islands.

14 The department of business, economic development, and
15 tourism shall be charged with the responsibility over the
16 permitting process.

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



1 "CHAPTER

2 WIND ENERGY AND UNDERSEA CABLE SYSTEM DEVELOPMENT

3 § -1 **Short title.** This chapter shall be known and may
4 be cited as the Wind Energy and Undersea Cable System
5 Development Permitting Act.

6 § -2 **Definitions.** As used in this chapter, unless the
7 context clearly requires otherwise:

8 "Agency" means any department, office, board, or commission
9 of the State or a county government, but does not include the
10 state legislature.

11 "Applicant" means any person who, pursuant to statute,
12 ordinance, rule, or regulation, requests any approval or permit
13 required for the proposed project.

14 "Approval" means a discretionary consent required from an
15 agency prior to the actual implementation of the project.

16 "Department" means the department of business, economic
17 development, and tourism.

18 "Discretionary consent" means a consent, sanction, or
19 recommendation from an agency for which judgment and free will
20 may be exercised by the issuing agency, as distinguished from a
21 ministerial consent.



1 "Environmental impact statement" means, as applicable, an
2 informational document prepared in compliance with chapter 343
3 or with the National Environmental Policy Act of 1969 (Public
4 Law 91-190).

5 "Interagency group" means the body established pursuant to
6 section -5.

7 "Permit" means any license, permit, certificate,
8 certification, approval, compliance schedule, or other similar
9 document or decision pertaining to any regulatory or management
10 program that is related to the protection, conservation, use of,
11 or interference with the natural resources of land, air, or
12 water in the state and that is required prior to or in
13 connection with the undertaking of the project.

14 "Person" includes any individual, partnership, firm,
15 association, trust, estate, corporation, joint venture,
16 consortium, or other legal entity other than an agency.

17 "Project" means the commercial development, construction,
18 installation, financing, operation, maintenance, repair, and
19 replacement including without limitation all applicable
20 exploratory, testing, and predevelopment activities related to
21 the foregoing, of:



1 (1) A wind energy facility, including all associated
2 buildings, structures, other improvements, equipment,
3 wells, and transmission lines, on any island in the
4 State of Hawaii for the purpose of generating electric
5 energy for transmission primarily to the island of
6 Oahu through the cable system; and

7 (2) An interisland deep water electrical transmission
8 cable system, including all land-based transmission
9 lines and other ancillary facilities, to transmit wind
10 generated electric energy from any neighbor island in
11 the State of Hawaii to the island of Oahu, regardless
12 of whether the cable system is used to deliver
13 electric energy to any intervening point.

14 **§ -3 Project permit application and review process.**

15 (a) The department is designated as the lead agency for the
16 purposes of this chapter and, in addition to its existing
17 functions, shall establish and administer the project permit
18 application and review process provided for in this chapter.

19 (b) The project permit application and review process
20 shall incorporate:

21 (1) A list of all permits required for the project;



- 1 (2) The role and functions of the department as the lead
2 agency and the interagency group;
- 3 (3) All permit review and approval deadlines;
- 4 (4) A schedule for meetings and actions of the interagency
5 group;
- 6 (5) A mechanism to resolve any conflicts that may arise
7 between or among the department and any other
8 agencies, including any federal agencies, as a result
9 of conflicting permit, approval, or other
10 requirements, procedures, or agency perspectives;
- 11 (6) Any other administrative procedures related to the
12 foregoing; and
- 13 (7) A project permit application form to be used for the
14 project for all permitting purposes.
- 15 (c) The department shall perform all of the permitting
16 functions for which it is currently responsible and shall
17 coordinate the concurrent review of the listed permits in
18 section -9 by agencies with jurisdiction over the project.
19 This review process and shall include to the fullest extent
20 possible all federal agencies having jurisdiction over any
21 aspect of the project.



1 (d) All project permits identified in the project permit
2 application and review process shall be processed and either
3 denied or approved no later than twenty-four months after the
4 date that the project permit application is filed and deemed
5 accepted by the department.

6 § -4 **Project permit application, review, and approval**
7 **process; implementation.** (a) The department shall serve as the
8 lead agency for the project permit application and review
9 process established pursuant to section -3 and as set forth
10 in this section for the project. All relevant agencies with
11 jurisdiction over the project shall be required to participate
12 in the project permit application and review process.

13 (b) To the greatest extent possible, the department and
14 each agency with jurisdiction over the project shall complete
15 all of their respective permitting functions for the purposes of
16 the project in accordance with the timetable for regulatory
17 review set forth in the joint agreement described in subsection

18 (c)(3) and within the time limits contained in the applicable
19 permit statutes, ordinances, rules, or federal regulations;
20 except that the department or any agency shall have good cause
21 to extend, if and as permitted, the applicable time limit if the
22 permit-issuing agency relies on another agency, including any



1 federal agency, for all or part of the permit processing and the
2 delay is caused by the other agency.

3 (c) The procedure shall be as follows:

4 (1) The applicant shall submit the project permit
5 application using the project permit application form
6 that shall include whatever data about the proposed
7 project that the department deems necessary to fulfill
8 the purposes of this chapter and to determine which
9 other agencies may have jurisdiction over any aspect
10 of the proposed project;

11 (2) Upon receipt of the project permit application, the
12 department shall notify all agencies with jurisdiction
13 over the project, as well as all federal agencies,
14 that the department determines may have jurisdiction
15 over any aspect of the proposed project as set forth
16 in the application and shall invite the federal
17 agencies so notified to participate in the project
18 permit application process. The agencies, and those
19 federal agencies that accept the invitation,
20 thereafter shall participate in the project permit
21 application and review process;



1 (3) The representatives of the department and the state,
2 county, and federal agencies and the applicant shall
3 develop and sign a joint agreement among themselves
4 that shall:

5 (A) Identify the members of the project permit
6 application, review, and approval team;

7 (B) Identify all permits required for the project;

8 (C) Specify the regulatory and review
9 responsibilities of the department and each
10 state, county, and federal agency and set forth
11 the responsibilities of the applicant;

12 (D) Establish a timetable for regulatory review, the
13 conduct of necessary hearings, the preparation of
14 any necessary environmental assessment or
15 environmental impact statement, and other actions
16 required to minimize duplication and to
17 coordinate and consolidate the activities of the
18 applicant, the department, and the state, county,
19 and federal agencies; and

20 (E) Provide that a hearing required for a particular
21 permit shall be held on the islands where the
22 proposed activity shall occur. To the extent



1 practicable, the department shall consolidate any
2 hearings required for all permits that shall be
3 required for the application;

4 (4) A project permit application, review, and approval
5 team shall be established and shall consist of the
6 members of the interagency group established pursuant
7 to section -5. The applicant shall designate its
8 representative to be available to the review team, as
9 it may require, for purposes of processing the
10 applicant's consolidated permit application;

11 (5) The project permit application, review, and approval
12 process shall not affect or invalidate the
13 jurisdiction or authority of any agency under existing
14 law;

15 (6) The applicant shall apply directly to each federal
16 agency that does not participate in the project permit
17 application, review, and approval process;

18 (7) The department shall review for completeness and
19 thereafter shall process the project permit
20 application submitted by an applicant for the project
21 and shall monitor the processing of any permit
22 applications by agencies with jurisdiction over the



1 project. The department shall coordinate and seek to
2 consolidate where possible the permitting functions
3 and shall monitor and assist in the permitting
4 functions conducted by all agencies with jurisdiction
5 over the project and, to the fullest extent possible,
6 the federal agencies in accordance with the project
7 permit application, review, and approval process; and

8 (8) Once the processing of the project permit application
9 has been completed and all permits required for the
10 project have been issued to the applicant, the
11 department shall monitor the applicant's work
12 undertaken pursuant to the permits to ensure the
13 applicant's compliance with the terms and conditions
14 of the permits.

15 (d) Where the contested case provisions under chapter 91
16 apply to any one or more of the permits to be issued by the
17 department or any agency for the purposes of the project, the
18 department or agency, if there is a contested case involving any
19 of the permits, may be required to conduct only one contested
20 case hearing on the permit or permits within its jurisdiction.
21 Any appeal from a decision made by the department or agency
22 pursuant to a public hearing or hearings required in connection



1 with a permit shall be made directly on the record to the
2 intermediate court of appeals, subject to chapter 602.

3 § -5 **Interagency group.** (a) The department shall
4 establish an interagency group comprised of those agencies with
5 jurisdiction over the project. Each of these agencies shall
6 designate an appropriate representative to serve on the
7 interagency group as part of the representative's official
8 responsibilities. The interagency group shall perform liaison
9 and assistance functions as required by this chapter and the
10 department. The department shall invite and encourage the
11 appropriate federal agencies having jurisdiction over any aspect
12 of the project to participate in the interagency group.

13 (b) The department and agencies shall cooperate with the
14 federal agencies to the fullest extent possible to minimize
15 duplication between and, where possible, promote consolidation
16 of federal and state requirements. To the fullest extent
17 possible, this cooperation shall include among other things
18 joint environmental impact statements with concurrent public
19 review and processing at both levels of government. Where
20 federal law has requirements that are in addition to but not in
21 conflict with state law requirements, the department and the
22 agencies shall cooperate to the fullest extent possible in



1 fulfilling their requirements so that all documents shall comply
2 with all applicable laws.

3 § -6 **Streamlining activities.** In administering the
4 project permit application, review, and approval process, the
5 department shall:

- 6 (1) Monitor all permit applications submitted under this
7 chapter and the processing thereof on an ongoing basis
8 to determine the source of any inefficiencies, delays,
9 and duplications encountered and the status of all
10 permits in process;
- 11 (2) Adopt and implement needed streamlining measures
12 identified by the interagency group, in consultation
13 with members of the public:
- 14 (3) Design, in addition to the project permit application
15 form, other applications, checklists, and forms
16 essential to the implementation of the project review
17 and approval process;
- 18 (4) Recommend to the legislature, as appropriate,
19 suggested changes to existing laws to eliminate any
20 duplicative or redundant permit procedures or
21 requirements;



- 1 (5) Coordinate with agencies to ensure that all standards
2 used in any agency decision-making for any required
3 permits are clear, explicit, and precise; and
- 4 (6) Incorporate, where possible, rebuttable presumptions
5 based upon requirements met for permits issued
6 previously under the consolidated permit application,
7 review, and approval process.

8 § -7 **Information services.** The department shall:

- 9 (1) Operate a permit information and coordination center
10 during normal working hours, which shall provide
11 guidance with regard to the permits and procedures
12 that may apply to the project; and
- 13 (2) Maintain and update a repository of the laws, rules,
14 procedures, permit requirements, and criteria of
15 agencies whose permitting functions are not
16 transferred by section -9 to the department for the
17 purposes of the project and that have control or
18 regulatory power over any aspect of the project and of
19 federal agencies having jurisdiction over any aspect
20 of the project.

21 § -8 **Construction of the chapter; rules.** This chapter
22 shall be construed liberally to effectuate its purposes, and the



1 department shall have all powers that may be necessary to carry
2 out the purposes of this chapter, including the authority to
3 make, amend, and repeal rules to implement this chapter;
4 provided that all procedures for public information and review
5 under chapter 91 shall be preserved; and provided further that
6 the consolidated permit application, review, and approval
7 process, except as provided in this chapter, shall not affect or
8 invalidate the jurisdiction or authority of any agency under
9 existing law. The adoption, amendment, and repeal of all rules
10 shall be subject to chapter 91.

11 **§ -9 Applicable permits to be included in the project**
12 **permit application process.** (a) The project permit application
13 process shall include but not be limited to the following
14 permits:

- 15 (1) From the land use commission: Any district boundary
16 amendment involving land areas greater than fifteen
17 acres (section 205-4);
- 18 (2) From the department of business, economic development,
19 and tourism: federal consistency review required for
20 activity within the coastal zone (section 205A-3);
- 21 (3) From the department of health:



- 1 (A) Water quality certification for discharge into
2 navigable waters (part III of chapter 342D); and
3 (B) Storm water discharge permit (part III of chapter
4 342D);
- 5 (4) From the department of land and natural resources:
- 6 (A) Conservation district use permit (section
7 183C-6);
- 8 (B) Ocean dredging, filling, or construction permit
9 (section 183C-6);
- 10 (C) Ocean lease, right-of-entry, or revocable permit
11 for activity on state-owned lands, including
12 submerged lands and sub-surface marine waters
13 (section 190D-21);
- 14 (D) Incidental taking of a threatened or endangered
15 species license (section 195D-4);
- 16 (E) Stream channel alteration permit (section 174C-
17 71);
- 18 (F) Well construction and pump installation permit
19 (section 174C-84);
- 20 (G) Historic property, aviation artifact, or burial
21 site review (section 6E-42);



- 1 H) Burial sites and human remains discovery (section
- 2 6E-43.6);
- 3 (I) Historic site review (section 6E-8);
- 4 (5) From the public utilities commission:
- 5 (A) Power purchase agreement (section 269-27.2); and
- 6 (B) High voltage transmission line development
- 7 (chapter 269);
- 8 (6) From the county of Maui:
- 9 (A) Community plan and zoning requirements ();
- 10 (B) Special use permit ();
- 11 (C) Special management area use permit ();
- 12 (D) Shoreline setback variance ();
- 13 (E) Planned development approval (); and
- 14 (F) Subdivision, grubbing, grading, and building
- 15 permits ();
- 16 and
- 17 (7) From the city and county of Honolulu:
- 18 (A) Development plan and zoning requirements ();
- 19 and
- 20 (B) ().
- 21 (b) Nothing in this section shall be construed to relieve
- 22 an applicant from the laws, ordinances, and rules of any agency



1 whose functions are not transferred by this section to the
2 department for the purposes of the project.

3 (c) Except as provided in subsection (a)(5), this section
4 shall not apply to any permit issued by the public utilities
5 commission under chapter 269.

6 § -10 **Annual report.** Twenty days prior to the convening
7 of each regular session, the department shall submit an annual
8 report to the governor and legislature on its work during the
9 preceding year, the development status of the project, any
10 problems encountered, and any legislative actions that may be
11 needed further to improve the consolidated permit application,
12 review, and approval process and implement the intent of this
13 chapter.

14 § -11 **Severability.** If any provision of this chapter or
15 the application thereof to any person or circumstances is held
16 invalid, the invalidity shall not affect other provisions or
17 applications of this chapter that can be given effect without
18 the invalid provision or application, and to this end the
19 provisions of this chapter are declared severable.

20 § -12 **Exemptions from certain state laws.** To promote
21 the purposes of this chapter, all persons hired by the



1 department to effectuate this chapter are exempted from chapters
2 76 and 89."

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ so much
5 thereof as may be necessary for fiscal year 2008-2009 for the
6 establishment of the project permit application, review, and
7 approval process for wind energy and undersea cable system
8 development.

9 There is appropriated out of the general revenues of the
10 State of Hawaii the sum of \$112,904 or so much thereof as may be
11 necessary for fiscal year 2008-2009 for the establishment of one
12 full-time equivalent (1.00 FTE) permanent renewable energy
13 facilitator position in the department of business, economic
14 development, and tourism to facilitate the efficient permitting
15 of renewable energy projects through the project permit and
16 review process and to initiate the implementation of key
17 renewable energy projects permitting efficiency improvement
18 strategies identified by the department of business, economic
19 development, and tourism.

20 The sums appropriated shall be expended by the department
21 of business, economic development, and tourism for the purposes
22 of this Act.



1 SECTION 4. This Act shall take effect on July 1, 2025.



Report Title:

Wind Energy; Undersea Cable

Description:

Establishes a coordinated process for the approval of permits for an interisland wind energy and undersea cable project.

(HB2862 HD1)

