
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1 SECTION 1. The purpose of this Act is to establish a
2 renewable energy facility siting process for state and county
3 permits necessary for the siting, development, construction, and
4 operation of a renewable energy facility.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 "CHAPTER

9 RENEWABLE ENERGY FACILITY SITING PROCESS

10 § -1 Definitions. As used in this chapter, unless the
11 context otherwise requires:

12 "County agency" means a department, division, office,
13 officer, agency, or other organization of a county government,
14 including a county council.

15 "County law" means a county charter provision, ordinance,
16 or administrative rule.

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



1 "Delegated environmental permit" means an air or water
2 quality permit subject to issuance by the department of health
3 under authority delegated by the United States Environmental
4 Protection Agency.

5 "Energy resources coordinator" or "coordinator" means the
6 energy resources coordinator as designated in section 196-3.

7 "Permit":

8 (1) Means any approval, no matter the nomenclature,
9 necessary for the siting, development, construction,
10 or operation of a renewable energy facility; except
11 that the term shall not include:

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

14 (B) Issuance by a county agency of a building or
15 grading permit; or

16 (C) Approval by the public utilities commission of a
17 power purchase agreement between a renewable
18 energy facility and a public utility; and

19 (2) Includes:

20 (A) A state land use reclassification;

21 (B) A county development, community, or community
22 development plan amendment;



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

9 "Power purchase agreement" means an agreement between a
10 renewable energy facility owner and a public utility on the sale
11 of electricity produced by the facility to the public utility.

12 "Permit plan" means the aggregated set of required permits
13 for a renewable energy facility, coordinated by the department
14 of business, economic development, and tourism.

15 "Renewable energy" has the same meaning as defined under
16 section 269-91.

17 "Renewable energy facility" or "facility" means a facility
18 located in the State with the capacity to produce from renewable
19 energy at least two hundred megawatts of electricity. The term
20 includes any of the following associated with the facility:

- 21 (1) The land parcel on which the facility is situated;



- 1 (2) Any renewable energy production structure or
- 2 equipment;
- 3 (3) Any energy transmission line from the facility to a
- 4 public utility's electricity distribution system;
- 5 (4) Any on-site infrastructure; and
- 6 (5) Any on-site building, structure, other improvement, or
- 7 equipment necessary for the production of electricity
- 8 or biofuel from the renewable energy site,
- 9 transmission of the electricity or biofuel, or any
- 10 accommodation for employees of the facility.

11 "State agency" means a department, division, office,

12 agency, or other organization of the state government, but not

13 the legislature.

14 "State law" means a state constitutional provision,

15 statute, or administrative rule.

16 "State permit" means a permit that is subject to the

17 approval of a state agency pursuant to federal or state law;

18 except that the term does not include a delegated environmental

19 permit.

20 **§ -2 Renewable energy facility siting process staff.**

21 The energy resources coordinator may employ and dismiss staff

22 without regard to chapters 76 and 89 to assist the coordinator



1 in the implementation of this chapter. The salary of each staff
2 member shall be set by the coordinator. Each staff member shall
3 be entitled to participate in any public employee benefit
4 program plan or privilege.

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

7 § -3 General duties of the coordinator. The coordinator
8 shall:

- 9 (1) Consult with appropriate state and county agencies to
10 develop and establish a consolidated application;
- 11 (2) Receive a consolidated application, in a form as the
12 coordinator shall prescribe, from an applicant for the
13 approval of the siting, development, construction, and
14 operation of a renewable energy facility, with an
15 appropriate initial application fee as determined by
16 the coordinator;
- 17 (3) Identify all state and county permits necessary for
18 approval of the renewable energy facility;
- 19 (4) Assist in the permit application process by
20 coordinating permitting processes, giving technical
21 assistance, overseeing the creation of the permit
22 plan, and providing general oversight to facilitate



1 the successful and expedient permitting of the siting
2 of a renewable energy facility;

3 (5) Gather from the applicant any information the
4 coordinator finds relevant and necessary for the
5 reviewing and processing of a permit application by
6 the federal, state, and county agencies; and

7 (6) Work with the federal, state, and county agencies and
8 the applicant to determine the terms and conditions of
9 the permits that are necessary to effectuate this
10 chapter and to protect the public health and safety
11 and promote the general welfare.

12 § -4 Consolidated application; coordinator; fee;
13 pre-application conference. (a) The coordinator shall
14 establish and require the applicant to pay a fee for the
15 coordinator's services in overseeing the consolidated
16 application process. The coordinator shall set the fee at an
17 amount sufficient to cover the costs and expenses of the
18 coordinator, coordinator's staff and any contractor contracted
19 by the coordinator to assist the applicant, and relevant state
20 and county agencies, if necessary, to provide input and advice
21 on the state and county permits necessary for the facility and
22 in obtaining the permits. Upon collection of the fee or



1 periodically thereafter, the coordinator, if necessary, shall
2 transmit to each relevant state or county agency the portion of
3 the fee that reflects the cost to that state or county agency
4 for providing its input or advice or issuing the required
5 permits.

6 (b) Before accepting a consolidated application, the
7 coordinator may hold a pre-application conference with the
8 prospective applicant to discuss all the state and county
9 permits necessary for the facility and notify the prospective
10 applicant of the information that must be submitted for the
11 necessary permits under the consolidated application.

12 (c) Within ten days of receipt of a consolidated
13 application, the coordinator shall publish public notice of the
14 receipt of the application in a statewide publication. The
15 public notice shall include:

- 16 (1) The name of the applicant;
- 17 (2) The location of the proposed renewable energy
18 facility;
- 19 (3) A summarized description of the facility;
- 20 (4) The state and county permits required for the
21 facility; and



1 (5) Any other information deemed necessary or desirable by
2 the coordinator.

3 (d) In conjunction with the pre-application conference,
4 the initial public meeting, and any subsequent coordinating
5 meetings with permitting agencies, the coordinator shall compile
6 a permitting plan, which shall include:

7 (1) All state and county permits needed;

8 (2) All applicant information required;

9 (3) A plan for permits to be processed concurrently;

10 (4) A list of required state and county technical support
11 and data required;

12 (5) Agreement on timeline and coordination for potential
13 EIS and permit concurrence, review, and issuance;

14 (6) Agreement on conditions by which any timelines may be
15 extended; and

16 (7) Agreement on cost reimbursement agreement.

17 (e) The permitting plan shall be a working document,
18 available to the public and regularly updated with current
19 information. It is to be used to promote efficiency and
20 transparency in the permitting process.

21 § -5 Approval of state permits. When the coordinator
22 receives a consolidated application for a renewable energy



1 facility that requires state permits, the coordinator shall
2 facilitate the expedited processing of the coordinated
3 application with the state agency or agencies responsible for
4 approving, monitoring, enforcing the terms and conditions of the
5 permit in accordance with the permitting plan.

6 § -6 Approval of county permits. When the coordinator
7 receives a coordinated application for a renewable energy
8 facility that requires county permits, coordinator shall
9 facilitate the expedited processing of the coordinated
10 application with the relevant county agency or agencies
11 responsible for approving, monitoring, enforcing the terms and
12 conditions of the permit in accordance with the permitting plan.

13 § -7 Coordination with federal permits and delegated
14 environmental permits. (a) The coordinator shall establish and
15 implement a system to coordinate the approval of required
16 federal permits with state and county permits for a renewable
17 energy facility. The system shall include a process for
18 coordinating the federal environmental impact statement process
19 with the state environmental impact statement process.

20 (b) The coordinator also shall establish and implement a
21 system to coordinate the issuance of delegated environmental



1 permits by the department of health with approval of state and
2 county permits for a renewable energy facility.

3 (c) The coordinator may convene interagency working groups
4 for the purpose of this section.

5 § -8 Environmental impact review process; applicability.

6 (a) Chapter 343 shall apply to any consolidate application for
7 a renewable energy facility.

8 (b) Nothing in this chapter or chapter 343 shall prohibit
9 the review and processing by the coordinator of applications for
10 permits for a renewable energy facility concurrently with the
11 preparation and processing by the applicant of an environmental
12 impact statement for the facility.

13 § -9 Building or grading permit required from county.

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



1 § -10 Judicial review of dispute regarding approved
2 permit; inapplicability of contested case procedures. Any
3 person aggrieved by the approval of a state or county permit or
4 term or condition of any approved permit may file an action for
5 relief in the circuit court without regard to the contested case
6 procedures of chapter 91.

7 § -11 Rules. The coordinator may adopt interim rules to
8 implement this chapter without regard to the notice and public
9 hearing requirements of section 91-3 or the small business
10 impact review requirements of chapter 201M; provided that any
11 amendment of the interim rules shall be subject to chapters 91
12 and 201M."

13 SECTION 3. Section 343-2, Hawaii Revised Statutes, is
14 amended by adding a new definition to be appropriately inserted
15 and to read as follows:

16 "Renewable energy facility" has the same meaning as
17 defined in section -1."

18 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) The public utilities commission may direct public
21 utilities that supply electricity to the public to arrange for
22 the acquisition of, and to acquire, electricity generated from



1 nonfossil fuel sources, as is available from and ~~[which]~~ that
2 the producers ~~[of same]~~ are willing and able to make available
3 to the public utilities, and to employ and dispatch the
4 nonfossil fuel generated electricity in a manner consistent with
5 the availability thereof to maximize the reduction in
6 consumption of fossil fuels in the generation of electricity to
7 be provided to the public.

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

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



1 For environmental assessments for which a finding of no
2 significant impact is anticipated:

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

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

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

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

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



1 The draft statement shall be made available for public
2 review and comment through the office for a period of forty-five
3 days. The office shall inform the public of the availability of
4 the draft statement for public review and comment pursuant to
5 section 343-3.

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

10 The authority to accept a final statement shall rest with
11 the agency initially receiving and agreeing to process the
12 request for approval. The final decision-making body or
13 approving agency for the request for approval is not required to
14 be the accepting authority. The planning department for the
15 county in which the proposed action will occur shall be a
16 permissible accepting authority for the final statement.

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 6. Chapter 196D, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 7. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2008-2009 for
6 the establishment and operation of the renewable energy facility
7 siting process established under this Act.

8 The sum appropriated shall be expended by the department of
9 business, economic development, and tourism for the purposes of
10 this Act.

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

Renewable Energy Facility Siting Process

Description:

Establishes a 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. (SD1)

