
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 "Permit plan" means the aggregated set of required permits

10 for a renewable energy facility, coordinated by the department

11 of business, economic development, and tourism.

12 "Power purchase agreement" means an agreement between a

13 renewable energy facility owner and a public utility on the sale

14 of electricity produced by the facility to the public utility.

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;

7 (6) Coordinate public meetings on the island where a
8 renewable energy facility is proposed to be developed
9 to:

10 (A) Allow members of the affected communities to
11 provide input regarding the development of the
12 renewable energy facility;

13 (B) Promote public awareness of the plan for the
14 renewable energy facility in the proposed area;
15 and

16 (C) Allow the coordinator, the applicant, and any
17 applicable agency to gain public sentiment and
18 input regarding the proposed development of the
19 renewable energy facility, and incorporate the
20 public sentiment and input into the planning of
21 the proposed renewable energy facility; and



1 (7) Work with the federal, state, and county agencies and
2 the applicant to determine the terms and conditions of
3 the permits that are necessary to effectuate this
4 chapter and to protect the public health and safety
5 and promote the general welfare.

6 **§ -4 Consolidated application; coordinator; fee;**
7 **pre-application conference.** (a) The coordinator shall
8 establish and require the applicant to pay a fee for the
9 coordinator's services in overseeing the consolidated
10 application process. The coordinator shall set the fee at an
11 amount sufficient to cover the costs and expenses of the
12 coordinator, coordinator's staff and any contractor contracted
13 by the coordinator to assist the applicant, and relevant state
14 and county agencies, if necessary, to provide input and advice
15 on the state and county permits necessary for the facility and
16 in obtaining the permits. Upon collection of the fee or
17 periodically thereafter, the coordinator, if necessary, shall
18 transmit to each relevant state or county agency the portion of
19 the fee that reflects the cost to that state or county agency
20 for providing its input or advice or issuing the required
21 permits. The coordinator shall deposit into the energy security
22 special fund any unencumbered fees collected from the applicant.



1 (b) Before accepting a consolidated application, the
2 coordinator may hold a pre-application conference with the
3 prospective applicant to discuss all the state and county
4 permits necessary for the facility and notify the prospective
5 applicant of the information that must be submitted for the
6 necessary permits under the consolidated application.

7 (c) Within ten days of receipt of a consolidated
8 application, the coordinator shall publish public notice of the
9 receipt of the application in a statewide publication. The
10 public notice shall include:

- 11 (1) The name of the applicant;
- 12 (2) The location of the proposed renewable energy
13 facility;
- 14 (3) A summarized description of the facility;
- 15 (4) The state and county permits required for the
16 facility; and
- 17 (5) Any other information deemed necessary or desirable by
18 the coordinator.

19 (d) In conjunction with the pre-application conference,
20 the initial public meeting, and any subsequent coordinating
21 meetings with permitting agencies, the coordinator shall compile
22 a permitting plan, which shall include:



- 1 (1) All state and county permits needed;
- 2 (2) All applicant information required;
- 3 (3) A plan for permits to be processed concurrently;
- 4 (4) A list of required state and county technical support
5 and data required;
- 6 (5) Agreement on timeline and coordination for potential
7 environmental impact statements and permit
8 concurrence, review, and issuance;
- 9 (6) Agreement on conditions by which any timelines may be
10 extended; and
- 11 (7) Agreement on cost reimbursement agreement.

12 (e) The permitting plan shall be a working document,
13 available to the public and regularly updated with current
14 information. It is to be used to promote efficiency and
15 transparency in the permitting process.

16 **§ -5 Approval of state permits.** When the coordinator
17 receives a consolidated application for a renewable energy
18 facility that requires state permits, the coordinator shall
19 facilitate the expedited processing of the coordinated
20 application with the state agency or agencies responsible for
21 approving, monitoring, enforcing the terms and conditions of the
22 permit in accordance with the permitting plan.



1 **§ -6 Approval of county permits.** When the coordinator
2 receives a coordinated application for a renewable energy
3 facility that requires county permits, the coordinator shall
4 facilitate the expedited processing of the coordinated
5 application with the relevant county agency or agencies
6 responsible for approving, monitoring, enforcing the terms and
7 conditions of the permit in accordance with the permitting plan.

8 **§ -7 Coordination with federal permits and delegated**
9 **environmental permits.** (a) The coordinator shall establish and
10 implement a system to coordinate the approval of required
11 federal permits with state and county permits for a renewable
12 energy facility. The system shall include a process for
13 coordinating the federal environmental impact statement process
14 with the state environmental impact statement process.

15 (b) The coordinator also shall establish and implement a
16 system to coordinate the issuance of delegated environmental
17 permits by the department of health with approval of state and
18 county permits for a renewable energy facility.

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



1 **§ -8 Environmental impact review process; applicability.**

2 (a) Chapter 343 shall apply to any consolidated application for
3 a renewable energy facility.

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

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

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

18 **§ -10 Public participation; public meetings.** Upon
19 approval of the consolidated application for a renewable energy
20 facility, the coordinator shall hold a public meeting on the
21 island on which the renewable energy facility will be built.
22 The purpose of the public meetings shall be to promote public



1 awareness of the proposed renewable energy facility in the
2 affected areas. The public meeting shall be an opportunity for
3 any members of the affected community to provide input regarding
4 the development and construction of the renewable energy
5 facility and regarding the permitting plan developed pursuant to
6 section -4. The public meeting shall also be an opportunity
7 for the coordinator, the applicant, and any applicable state or
8 county agencies to gain public and community sentiment regarding
9 the proposed development of the renewable energy facility, and
10 incorporate the public sentiment and input into the planning of
11 the proposed renewable energy facility.

12 **§ -11 Judicial review of dispute regarding approved**
13 **permit; inapplicability of contested case procedures.** Any
14 person aggrieved by the approval of a state or county permit or
15 term or condition of any approved permit may file an action for
16 relief in the circuit court without regard to the contested case
17 procedures of chapter 91.

18 **§ -12 Rules.** The coordinator may adopt interim rules to
19 implement this chapter without regard to the notice and public
20 hearing requirements of section 91-3 or the small business
21 impact review requirements of chapter 201M; provided that any



1 amendment of the interim rules shall be subject to chapters 91
2 and 201M."

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

6 "Renewable energy facility" has the same meaning as
7 defined in section -1."

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

10 "(b) The public utilities commission may direct public
11 utilities that supply electricity to the public to arrange for
12 the acquisition of and to acquire electricity generated from
13 nonfossil fuel sources as is available from and ~~which~~ the
14 producers ~~[of same]~~ are willing and able to make available to
15 the public utilities, and to employ and dispatch the nonfossil
16 fuel generated electricity in a manner consistent with the
17 availability thereof to maximize the reduction in consumption of
18 fossil fuels in the generation of electricity to be provided to
19 the public."

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



1 "(c) Whenever an applicant proposes an action specified by
2 subsection (a) that requires approval of an agency and that is
3 not a specific type of action declared exempt under section
4 343-6, the agency initially receiving and agreeing to process
5 the request for approval shall prepare an environmental
6 assessment of the proposed action at the earliest practicable
7 time to determine whether an environmental impact statement
8 shall be required[-]; provided that, for an action that proposes
9 the establishment of a renewable energy facility, a draft
10 environmental impact statement shall be prepared at the earliest
11 practicable time. The final approving agency for the request
12 for approval is not required to be the accepting authority.

13 For environmental assessments for which a finding of no
14 significant impact is anticipated:

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

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

21 (3) The applicant shall respond in writing to comments
22 received during the review, and the agency shall



1 prepare a final environmental assessment to determine
2 whether an environmental impact statement shall be
3 required. A statement shall be required if the agency
4 finds that the proposed action may have a significant
5 effect on the environment. The agency shall file
6 notice of the agency's determination with the office,
7 which, in turn, shall publish the agency's
8 determination for the public's information pursuant to
9 section 343-3.

10 The draft and final statements, if required, shall be
11 prepared by the applicant, who shall file these statements with
12 the office.

13 The draft statement shall be made available for public
14 review and comment through the office for a period of forty-five
15 days. The office shall inform the public of the availability of
16 the draft statement for public review and comment pursuant to
17 section 343-3.

18 The applicant shall respond in writing to comments received
19 during the review and prepare a final statement. The office,
20 when requested by the applicant or agency, may make a
21 recommendation as to the acceptability of the final statement.



1 The authority to accept a final statement shall rest with
2 the agency initially receiving and agreeing to process the
3 request for approval. The final decision-making body or
4 approving agency for the request for approval is not required to
5 be the accepting authority. The planning department for the
6 county in which the proposed action will occur shall be a
7 permissible accepting authority for the final statement.

8 Acceptance of a required final statement shall be a
9 condition precedent to approval of the request and commencement
10 of the proposed action. Upon acceptance or nonacceptance of the
11 final statement, the agency shall file notice of such
12 determination with the office. The office, in turn, shall
13 publish the determination of acceptance or nonacceptance of the
14 final statement pursuant to section 343-3.

15 The agency receiving the request, within thirty days of
16 receipt of the final statement, shall notify the applicant and
17 the office of the acceptance or nonacceptance of the final
18 statement. The final statement shall be deemed to be accepted
19 if the agency fails to accept or not accept the final statement
20 within thirty days after receipt of the final statement;
21 provided that the thirty-day period may be extended at the



1 request of the applicant for a period not to exceed fifteen
2 days.

3 In any acceptance or nonacceptance, the agency shall
4 provide the applicant with the specific findings and reasons for
5 its determination. An applicant, within sixty days after
6 nonacceptance of a final statement by an agency, may appeal the
7 nonacceptance to the environmental council, which, within thirty
8 days of receipt of the appeal, shall notify the applicant of the
9 council's determination. In any affirmation or reversal of an
10 appealed nonacceptance, the council shall provide the applicant
11 and agency with specific findings and reasons for its
12 determination. The agency shall abide by the council's
13 decision."

14 SECTION 6. Chapter 196D, Hawaii Revised Statutes, is
15 repealed.

16 SECTION 7. There is appropriated out of the energy
17 security special fund established under H.B. No. 2505 (2008), as
18 amended and enacted, the sum of \$ or so much thereof
19 as may be necessary for fiscal year 2008-2009 for the
20 establishment and operation of the renewable energy facility
21 siting process established under this Act.



1 The sum appropriated shall be expended by the department of
2 business, economic development, and tourism for the purposes of
3 this Act.

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 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. (SD2)

