

JAN 18 2008

A BILL FOR AN ACT

RELATING TO WIND 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 consolidated process for the approval of permits for a wind
3 energy and undersea cable project. Under the project,
4 electricity produced by wind power on the island of Lanai is to
5 be transmitted by undersea cable for consumption on the island
6 of Oahu. The department of business, economic development, and
7 tourism is charged with responsibility over the consolidated
8 permit approval process.

9 This Act is substantially similar to chapter 196D, Hawaii
10 Revised Statutes, relating to a consolidated permitting process
11 for the development of a geothermal energy and undersea cable
12 system.

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

16 **"CHAPTER**

17 **WIND ENERGY AND UNDERSEA CABLE SYSTEM DEVELOPMENT**



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

4 **§ -2 Definitions.** As used in this chapter, unless the
5 context clearly requires otherwise:

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

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

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

14 "Department" means the department of business, economic
15 development, and tourism.

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

20 "Environmental impact statement" means, as applicable, an
21 informational document prepared in compliance with chapter 343



1 or with the National Environmental Policy Act of 1969 (Public
2 Law 91-190).

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

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

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

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

- 20 (1) A wind energy facility, including all associated
21 buildings, structures, other improvements, equipment,
22 wells, and transmission lines, on the island of Lanai



1 for the purpose of generating electric energy for
2 transmission primarily to the island of Oahu through
3 the cable system; and

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

11 § -3 Consolidated permit application, review, and
12 approval process. (a) The department is designated as the lead
13 agency for the purposes of this chapter and, in addition to its
14 existing functions, shall establish and administer the
15 consolidated permit application, review, and approval process
16 provided for in this chapter, which shall incorporate the
17 permitting functions of those agencies involved in the
18 development of the project that are transferred by section -9
19 to the department to effectuate the purposes of this chapter.

20 (b) The consolidated permit application, review, and
21 approval process shall incorporate:

22 (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 consolidated permit application form to be used for
14 the project for all permitting purposes.
- 15 (c) The department shall perform all of the permitting
16 functions for which it is currently responsible and that are
17 transferred to it by section -9 for the purposes of the
18 project and shall coordinate and consolidate all required permit
19 reviews by other agencies and, to the fullest extent possible,
20 by all federal agencies having jurisdiction over any aspect of
21 the project.



1 **§ -4 Consolidated permit application, review, and**
2 **approval process; implementation.** (a) The department shall
3 serve as the lead agency for the consolidated permit
4 application, review, and approval process established pursuant
5 to section -3 and as set forth in this section for the
6 project. All agencies whose permitting functions are not
7 transferred by section -9 to the department for the purposes
8 of the project are required to participate in the consolidated
9 permit application, review, and approval process.

10 (b) To the greatest extent possible, the department and
11 each agency whose permitting functions are not transferred by
12 section -9 to the department for the purposes of the project
13 shall complete all of their respective permitting functions for
14 the purposes of the project in accordance with the timetable for
15 regulatory review set forth in the joint agreement described in
16 subsection (c)(3) and within the time limits contained in the
17 applicable permit statutes, ordinances, rules, or federal
18 regulations; except that the department or any agency shall have
19 good cause to extend, if and as permitted, the applicable time
20 limit if the permit-issuing agency must rely on another agency,
21 including any federal agency, for all or part of the permit
22 processing and the delay is caused by the other agency.



- 1 (c) The procedure shall be as follows:
- 2 (1) The applicant shall submit the consolidated permit
- 3 application using the consolidated permit application
- 4 form that shall include whatever data about the
- 5 proposed project that the department deems necessary
- 6 to fulfill the purposes of this chapter and to
- 7 determine which other agencies may have jurisdiction
- 8 over any aspect of the proposed project;
- 9 (2) Upon receipt of the consolidated permit application,
- 10 the department shall notify all agencies whose
- 11 permitting functions are not transferred by section
- 12 -9 to the department for the purposes of the
- 13 project, as well as all federal agencies, that the
- 14 department determines may have jurisdiction over any
- 15 aspect of the proposed project as set forth in the
- 16 application and shall invite the federal agencies so
- 17 notified to participate in the consolidated permit
- 18 application process. The agencies, and those federal
- 19 agencies that accept the invitation, thereafter shall
- 20 participate in the consolidated permit application,
- 21 review, and approval 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 consolidated 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 island 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 consolidated permit application, review, and
5 approval team shall be established and shall consist
6 of the members of the interagency group established
7 pursuant to section -5. The applicant shall
8 designate its representative to be available to the
9 review team, as it may require, for purposes of
10 processing the applicant's consolidated permit
11 application;

12 (5) The department and each agency whose permitting
13 functions are not transferred by section -9 to the
14 department for the purposes of the project and each
15 federal agency shall issue its own permit or approval
16 based upon its own jurisdiction. The consolidated
17 permit application, review, and approval process shall
18 not affect or invalidate the jurisdiction or authority
19 of any agency under existing law, except to the extent
20 that the permitting functions of any agency are
21 transferred by section -9 to the department for the
22 purposes of the project;



- 1 (6) The applicant shall apply directly to each federal
2 agency that does not participate in the consolidated
3 permit application, review, and approval process;
- 4 (7) The department shall review for completeness and
5 thereafter shall process the consolidated permit
6 application submitted by an applicant for the project
7 and shall monitor the processing of any permit
8 application by those agencies whose permitting
9 functions are not transferred by section -9 to the
10 department for the purposes of the project. The
11 department shall coordinate and seek to consolidate
12 where possible the permitting functions and shall
13 monitor and assist in the permitting functions
14 conducted by all of these agencies and, to the fullest
15 extent possible, the federal agencies in accordance
16 with the consolidated permit application, review, and
17 approval process; and
- 18 (8) Once the processing of the consolidated permit
19 application has been completed and all permits
20 required for the project have been issued to the
21 applicant, the department shall monitor the
22 applicant's work undertaken pursuant to the permits to



1 ensure the applicant's compliance with the terms and
2 conditions of the permits.

3 (d) Where the contested case provisions under chapter 91
4 apply to any one or more of the permits to be issued by the
5 department or any agency for the purposes of the project, the
6 department or agency, if there is a contested case involving any
7 of the permits, may be required to conduct only one contested
8 case hearing on the permit or permits within its jurisdiction.
9 Any appeal from a decision made by the department or agency
10 pursuant to a public hearing or hearings required in connection
11 with a permit shall be made directly on the record to the
12 intermediate court of appeals, subject to chapter 602.

13 § -5 **Interagency group.** (a) The department shall
14 establish an interagency group comprised of those agencies whose
15 permitting functions are not transferred by section -9 to the
16 department for the purposes of the project and that have
17 jurisdiction over any aspect of the project. Each of these
18 agencies shall designate an appropriate representative to serve
19 on the interagency group as part of the representative's
20 official responsibilities. The interagency group shall perform
21 liaison and assistance functions as required by this chapter and
22 the department. The department shall invite and encourage the



1 appropriate federal agencies having jurisdiction over any aspect
2 of the project to participate in the interagency group.

3 (b) The department and agencies shall cooperate with the
4 federal agencies to the fullest extent possible to minimize
5 duplication between and, where possible, promote consolidation
6 of federal and state requirements. To the fullest extent
7 possible, this cooperation shall include, among other things,
8 joint environmental impact statements with concurrent public
9 review and processing at both levels of government. Where
10 federal law has requirements that are in addition to but not in
11 conflict with state law requirements, the department and the
12 agencies shall cooperate to the fullest extent possible in
13 fulfilling their requirements so that all documents shall comply
14 with all applicable laws.

15 **§ -6 Streamlining activities.** In administering the
16 consolidated permit application, review, and approval process,
17 the department shall:

18 (1) Monitor all permit applications submitted under this
19 chapter and the processing thereof on an ongoing basis
20 to determine the source of any inefficiencies, delays,
21 and duplications encountered and the status of all
22 permits in process;



- 1 (2) Adopt and implement needed streamlining measures
2 identified by the interagency group, in consultation
3 with:
4 (A) Those agencies whose permitting functions are not
5 transferred by section -9 to the department
6 for the purposes of the project; and
7 (B) Members of the public;
- 8 (3) Design, in addition to the consolidated permit
9 application form, other applications, checklists, and
10 forms essential to the implementation of the
11 consolidated permit application, review, and approval
12 process;
- 13 (4) Recommend to the legislature, as appropriate,
14 suggested changes to existing laws to eliminate any
15 duplicative or redundant permit procedures or
16 requirements;
- 17 (5) Coordinate with agencies to ensure that all standards
18 used in any agency decisionmaking for any required
19 permits are clear, explicit, and precise; and
- 20 (6) Incorporate, where possible, rebuttable presumptions
21 based upon requirements met for permits issued



1 previously under the consolidated permit application,
2 review, and approval process.

3 **§ -7 Information services.** The department shall:

4 (1) Operate a permit information and coordination center
5 during normal working hours, which shall provide
6 guidance with regard to the permits and procedures
7 that may apply to the project; and

8 (2) Maintain and update a repository of the laws, rules,
9 procedures, permit requirements, and criteria of
10 agencies whose permitting functions are not
11 transferred by section -9 to the department for the
12 purposes of the project and that have control or
13 regulatory power over any aspect of the project and of
14 federal agencies having jurisdiction over any aspect
15 of the project.

16 **§ -8 Construction of the chapter; rules.** This chapter
17 shall be construed liberally to effectuate its purposes, and the
18 department shall have all powers that may be necessary to carry
19 out the purposes of this chapter, including the authority to
20 make, amend, and repeal rules to implement this chapter;
21 provided that all procedures for public information and review
22 under chapter 91 shall be preserved; and provided further that



1 the consolidated permit application, review, and approval
2 process, except as provided in this chapter, shall not affect or
3 invalidate the jurisdiction or authority of any agency under
4 existing law. The adoption, amendment, and repeal of all rules
5 shall be subject to chapter 91.

6 **§ -9 Transfer of functions.** (a) Those functions
7 identified in this subsection insofar as they relate to the
8 permit application, review, processing, approval, issuance, and
9 monitoring of laws and rules and to the enforcement of terms,
10 conditions, and stipulations of permits and other authorizations
11 issued by agencies with respect to the development,
12 construction, installation, operation, maintenance, repair, and
13 replacement of the project or any portion or portions thereof
14 are transferred to the department. With the transferred
15 functions, all enforcement functions of the agencies or their
16 officials related to the enforcement of the terms, conditions,
17 and stipulations of the subject permits shall be transferred to
18 the department. "Enforcement", for purposes of this transfer of
19 functions, includes monitoring and any other compliance or
20 oversight activities reasonably related to the enforcement
21 process. These transferred functions are the review,
22 processing, approval, and issuance of permits for the following



1 (the statutory and ordinance citations for the enumerated
2 permits are for guidance only):

3 (1) From the land use commission: Any district boundary
4 amendment involving land areas greater than fifteen
5 acres (section 205-4);

6 (2) From the department of business, economic development,
7 and tourism: federal consistency review required for
8 activity within the coastal zone (section 205A-3);

9 (3) From the department of health:

10 (A) Water quality certification for discharge into
11 navigable waters (part III of chapter 342D); and

12 (B) Storm water discharge permit (part III of chapter
13 342D);

14 (4) From the department of land and natural resources:

15 (A) Conservation district use permit (section
16 183C-6);

17 (B) Ocean dredging, filling, or construction permit
18 (section 183C-6);

19 (C) Ocean lease, right-of-entry, or revocable permit
20 for activity on state-owned lands, including
21 submerged lands and sub-surface marine waters
22 (section 190D-21);



- 1 (D) Incidental taking of a threatened or endangered
- 2 species license (section 195D-4);
- 3 (E) Stream channel alteration permit (section 174C-
- 4 71);
- 5 (F) Well construction and pump installation permit
- 6 (section 174C-84);
- 7 (G) Historic property, aviation artifact, or burial
- 8 site review (section 6E-42);
- 9 (H) Burial sites and human remains discovery (section
- 10 6E-43.6);
- 11 (I) Historic site review (section 6E-8);
- 12 (5) From the public utilities commission:
- 13 (A) Power purchase agreement (section 269-27.2); and
- 14 (B) High voltage transmission line development
- 15 (chapter 269);
- 16 (6) From the county of Maui:
- 17 (A) Community plan and zoning requirements ();
- 18 (B) Special use permit ();
- 19 (C) Special management area use permit ();
- 20 (D) Shoreline setback variance ();
- 21 (E) Planned development approval (); and



1 (F) Subdivision, grubbing, grading, and building
2 permits (); and

3 (7) From the city and county of Honolulu:

4 (A) Development plan and zoning requirements ();

5 (B) (); and

6 (C) ().

7 (b) Nothing in this section shall be construed to relieve
8 an applicant from the laws, ordinances, and rules of any agency
9 whose functions are not transferred by this section to the
10 department for the purposes of the project.

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

14 **§ -10 Annual report.** Twenty days prior to the convening
15 of each regular session, the department shall submit an annual
16 report to the governor and legislature on its work during the
17 preceding year, the development status of the project, any
18 problems encountered, and any legislative actions that may be
19 needed further to improve the consolidated permit application,
20 review, and approval process and implement the intent of this
21 chapter.



1 **§ -11 Severability.** If any provision of this chapter or
 2 the application thereof to any person or circumstances is held
 3 invalid, the invalidity shall not affect other provisions or
 4 applications of this chapter that can be given effect without
 5 the invalid provision or application, and to this end the
 6 provisions of this chapter are declared severable.

7 **§ -12 Exemptions from certain state laws.** In order to
 8 promote the purposes of this chapter, all persons hired by the
 9 department to effectuate this chapter are excepted from chapters
 10 76 and 89."

11 SECTION 3. There is appropriated out of the general
 12 revenues of the State of Hawaii the sum of \$ so much
 13 thereof as may be necessary for fiscal year 2008-2009 for the
 14 establishment of the consolidated permit application, review,
 15 and approval process for wind energy and undersea cable system
 16 development.

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

20 SECTION 4. This Act shall take effect on July 1, 2008.

21

INTRODUCED BY: Rumours. Kolt B/R



Report Title:

Wind Energy; Undersea Cable

Description:

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

