

JAN 22 2008

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY OPPORTUNITY ZONES.

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

1 SECTION 1. The legislature finds that Hawaii is dependent
2 on imported oil for more than ninety-two per cent of its energy
3 needs, making it the most vulnerable state in the nation to
4 economic disruption in the event of upheavals in the world oil
5 market. Moreover, during periods of supply curtailment, the
6 State's need to ensure basic public emergency services to
7 safeguard public health, safety, and welfare, such as police and
8 fire protection, hospital and ambulance services, and utility
9 emergency services, competes with the need to maintain Hawaii's
10 economy and employment levels, as well as the continued
11 operations of the State's transportation, commerce, industry,
12 construction, government, the military, and agriculture. Other
13 factors, including Hawaii's geographic isolation and lack of
14 overland access to energy sources, make the State unique in its
15 near total reliance on imported oil and vulnerability to supply
16 disruptions. The catastrophic events of September 11, 2001,



1 underline the need for Hawaii to severely reduce its dependence
2 on foreign oil.

3 State law already requires the State to establish policies
4 designed to increase energy self-sufficiency and energy
5 security, including the use of renewable resources. In
6 particular, section 226-18(a), Hawaii Revised Statutes, of the
7 Hawaii State Planning Act requires planning for the State's
8 facility systems with regard to energy to include "[i]ncreased
9 energy self-sufficiency where the ratio of indigenous to
10 imported energy use is increased..." and "[g]reater energy
11 security in the face of threats to Hawaii's energy supplies and
12 systems...". Similarly, section 226-103(f), Hawaii Revised
13 Statutes, establishes priority guidelines for energy use and
14 development to "[e]ncourage the development, demonstration, and
15 commercialization of renewable energy sources...".

16 The legislature further finds that Hawaii is blessed with
17 an abundance of renewable energy resources, including wind,
18 solar, hydropower, geothermal resources, ocean thermal energy
19 conversion, and wave energy. In particular, Act 272, Session
20 Laws of Hawaii 2001, recognized "the economic, environmental,
21 and fuel diversity benefits of renewable energy resources" and
22 the need to "encourage the establishment of a market for



1 renewable energy in Hawaii using the State's renewable energy
2 resources...". Act 272 further noted that "while Hawaii is a
3 national leader in the development of renewable energy resources
4 for electricity production, there may be more that the State can
5 do to encourage the development and implementation of renewable
6 energy. These efforts can reduce the amount of imported oil
7 used for the generation of electricity."

8 In the transportation sector, improving fuel economy to
9 slow the rise in oil use and greenhouse gas emissions may only
10 be a short-term tactic. Reducing oil consumption and carbon
11 dioxide emissions over the long-term can be achieved only by
12 switching to low-carbon non-petroleum fuels. However, even
13 large arrays of batteries cannot store enough charge to keep
14 cars running for distances compared to gasoline engines. In
15 contrast, fuel-cell vehicles, which combine hydrogen fuel and
16 oxygen from the air to generate power to run electric motors,
17 face fewer technical hurdles and are several times as efficient
18 as today's conventional gasoline cars. The only emission using
19 hydrogen fuel is water vapor -- there are no greenhouse gas
20 emissions. Over the past decade, seventeen countries have
21 announced national programs to develop hydrogen energy. In the
22 United States, more than thirty states and several Canadian



1 provinces are developing similar plans. Most major car
2 companies are demonstrating prototype hydrogen vehicles.
3 Toyota, and General Motors have announced plans to commercialize
4 fuel-cell vehicles sometime between 2010 and 2020. Automakers
5 and energy companies such as Shell, Chevron, and BP are working
6 with governments to introduce the first fleets of hydrogen
7 vehicles along with small refueling networks in California, the
8 northeastern United States, Europe, and China. In Hawaii, the
9 first hydrogen fueling station was opened at Hickam Air Force
10 Base in November 2006.

11 The purpose of this Act is to lessen Hawaii's dependence on
12 imported oil and encourage the greater use of renewable energy
13 by facilitating the development of renewable energy resources by
14 establishing renewable energy opportunity zones to accommodate
15 various types of renewable energy producing facilities with a
16 minimum of red tape.

17 The intent of the legislature is to have the groundwork
18 prepared in anticipation of the entry of qualified businesses
19 that are willing and able to invest in the State to develop
20 renewable energy resources by having certain areas in the
21 respective counties designated as renewable energy opportunity
22 zones, approved for certain types of renewable energy



1 generation, with all the necessary environment impact statements
2 performed and in place, and by expediting the issuance of
3 necessary county permits, in consultation with the respective
4 counties through their active participation in an advisory
5 committee.

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

9 "CHAPTER

10 RENEWABLE ENERGY OPPORTUNITY ZONES

11 § -1 Purpose. The purpose of this chapter is to reduce
12 the State's dependence on imported oil and increase the State's
13 energy self-sufficiency by providing for the establishment of
14 renewable energy opportunity zones.

15 § -2 Definitions. As used in this chapter, unless the
16 context clearly requires otherwise:

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

19 "Director" means the director of business, economic
20 development, and tourism.

21 "Establishment" means a single physical location where
22 electric energy is generated. A qualified business may include



1 one or more establishments, any number of which may be in a
2 renewable energy opportunity zone.

3 "Full-time employee" means any employee for whom the
4 employer is legally required to provide employee fringe
5 benefits.

6 "Qualified business" means any renewable energy generator
7 that is:

- 8 (1) Authorized to do business in this State;
- 9 (2) Qualified under section -8; and
- 10 (3) Is engaged in producing electric power from:
 - 11 (A) Hydrogen fuels derived entirely from renewable
 - 12 energy;
 - 13 (B) Wind energy;
 - 14 (C) Solar energy;
 - 15 (D) Hydropower;
 - 16 (E) Landfill gas;
 - 17 (F) Waste to energy;
 - 18 (G) Geothermal resources;
 - 19 (H) Ocean thermal energy conversion;
 - 20 (I) Wave energy;
 - 21 (J) Biomass, including municipal solid waste;



1 (K) Biofuels or fuels derived entirely from organic
2 sources; or

3 (L) Fuel cells where the fuel is derived entirely
4 from renewable sources;
5 for sale primarily to an energy utility for resale to
6 the public.

7 "Renewable energy" means electrical energy produced by
8 hydrogen fuels derived entirely from renewable energy, wind
9 energy, solar energy, hydropower, landfill gas, waste to energy,
10 geothermal resources, ocean thermal energy conversion, wave
11 energy, biomass including municipal solid waste, biofuels or
12 fuels derived entirely from organic sources, or fuel cells where
13 the fuel is derived entirely from renewable sources. "Renewable
14 energy" also means electrical energy savings brought about by
15 the use of solar and heat pump water heating.

16 "Renewable energy opportunity zone" means an area:

17 (1) Designated by the director of business, economic
18 development, and tourism under this chapter in
19 consultation with the renewable energy opportunity
20 zone advisory committee;

21 (2) That is within the jurisdiction of a county
22 government; and



1 (3) That is eligible for the benefits under this chapter.

2 "Renewable energy generator" means a person who produces
3 electric power, including any person who:

4 (1) Controls, operates, or manages plants or facilities
5 for the production, transmission, or furnishing of
6 power, whether in whole or in part, from any renewable
7 energy source; and

8 (2) Provides, sells, or transmits any or all of that
9 power, either directly or indirectly to an energy
10 utility for transmission to the public.

11 "Taxes due the State" means income taxes due under chapter
12 235.

13 **§ -3 Energy opportunity zone designation; consultation**
14 **with renewable energy opportunity zone advisory committee;**
15 **rules.** (a) The director, in consultation with the renewable
16 energy opportunity zone advisory committee, shall:

17 (1) Designate areas within the State as renewable energy
18 opportunity zones;

19 (2) Establish criteria for determining which areas qualify
20 as renewable energy opportunity zones;



- 1 (3) Determine what types of renewable energy generation
2 shall be approved for each designated renewable energy
3 opportunity zone;
- 4 (4) Determine the number of areas in each county that may
5 be designated as renewable energy opportunity zones;
6 and
- 7 (5) Set the period of time an area shall remain a
8 designated renewable energy opportunity zone.
- 9 (b) The director shall adopt rules in accordance with
10 chapter 91 to carry out the effect of this chapter.

11 § -4 Environmental impact statement; county issuance of
12 permits; reports. (a) The director shall:

- 13 (1) Perform the necessary environmental impact statement
14 or statements for the renewable energy generation
15 approved by the director in a designated renewable
16 energy opportunity zone; and
- 17 (2) Cooperate with the relevant county in which a
18 designated renewable energy opportunity zone is
19 located to expedite the issuance of all necessary
20 county permits by June 30, 2008.



1 (b) The director shall submit annual reports evaluating
2 the effectiveness of this chapter, including any recommendations
3 for legislation to the legislature and the governor.

4 § -5 **Government assistance; prohibition.** There shall be
5 no duplication of existing state tax incentives to qualified
6 businesses that locate in a renewable energy opportunity zone.

7 § -6 **Rules; consultation with county.** The department,
8 in consultation with each relevant county, shall adopt rules in
9 accordance with chapter 91 to implement this chapter, including
10 rules relating to health, safety, building, planning, zoning,
11 and land use, which shall supersede all other inconsistent
12 ordinances and rules relating to the use, zoning, planning, and
13 development of land and construction in a renewable energy
14 opportunity zone. Rules adopted under this section shall follow
15 existing law, rules, and ordinances as closely as is consistent
16 with standards meeting minimum requirements of energy
17 efficiency, health, and safety. The department may provide by
18 rule that lands within a renewable energy opportunity zone shall
19 not be developed beyond existing uses or that improvements
20 thereon shall not be demolished or substantially reconstructed,
21 or provide other restrictions on the use of the zone.



1 **§ -7 Renewable energy opportunity zone advisory**
2 **committee.** (a) There is established a renewable energy
3 opportunity zone advisory committee, to be placed within the
4 department for administrative purposes. The advisory committee
5 shall consist of five members appointed by the governor as
6 follows:

7 (1) One member knowledgeable in the renewable energy
8 industry from the department of business, economic
9 development, and tourism, who shall serve as
10 chairperson; and

11 (2) Four members representing each of the mayors of the
12 respective counties.

13 (b) Members shall not be compensated but shall be
14 reimbursed for necessary expenses, including travel expenses,
15 incurred in the course of carrying out their duties.

16 (c) The advisory committee shall provide consultation to
17 the director regarding matters enumerated in section -3.

18 **§ -8 Eligibility; qualified business; sale of property**
19 **or services.** (a) Any renewable energy generator may be
20 eligible to be designated a qualified business for purposes of
21 this chapter if the renewable energy generator:



- 1 (1) Begins the operation of a renewable energy generator
2 within a renewable energy opportunity zone;
- 3 (2) During each taxable year has at least per cent
4 of its renewable energy opportunity zone
5 establishment's gross receipts attributable to the
6 active production of electric power within the
7 renewable energy opportunity zone;
- 8 (3) Increases its average annual number of full-time
9 employees by at least per cent by the end of its
10 first tax year of participation; and
- 11 (4) During each subsequent taxable year at least maintains
12 that higher level of employment.
- 13 (b) A renewable energy generator also may be eligible to
14 be designated a qualified business for purposes of this chapter
15 if the renewable energy generator:
- 16 (1) Is actively engaged in producing electric power in an
17 area immediately prior to an area being designated a
18 renewable energy opportunity zone;
- 19 (2) Meets the requirements of subsection (a)(2); and
- 20 (3) Increases its average annual number of full-time
21 employees employed at the renewable energy generator's
22 establishment or establishments located within the



1 renewable energy opportunity zone by at least
2 per cent annually.

3 (c) After designation as a renewable energy opportunity
4 zone, each qualified business in the zone shall submit annually
5 to the department an approved form supplied by the department
6 that provides the information necessary for the department to
7 determine if the renewable energy generator qualifies as a
8 qualified business. The approved form shall be submitted by
9 each business to the governing body of the county in which the
10 renewable energy opportunity zone is located, then forwarded to
11 the department by the governing body of the county.

12 (d) The form referred to in subsection (c) shall be prima
13 facie evidence of the eligibility of a renewable energy
14 generator for the purposes of this section.

15 (e) Any electric power produced by a renewable energy
16 generator outside of a renewable energy opportunity zone shall
17 not be included in the determination of gross receipts
18 attributable to the active production of electric power under
19 subsection (a)(2).

20 § -9 State business tax credit. (a) The director shall
21 certify annually to the department of taxation the applicability
22 of the tax credit provided in this chapter for a qualified



1 business against any taxes due the State. Except for the
2 general excise tax, the credit shall be:

- 3 (1) Eighty per cent of the tax due for the first tax year;
- 4 (2) Seventy per cent of the tax due for the second tax
5 year;
- 6 (3) Sixty per cent of the tax due for the third year;
- 7 (4) Fifty per cent of the tax due the fourth year;
- 8 (5) Forty per cent of the tax due the fifth year;
- 9 (6) Thirty per cent of the tax due the sixth year; and
- 10 (7) Twenty per cent of the tax due the seventh year.

11 Any tax credit not usable shall not be applied to future tax
12 years.

13 (b) When a partnership is eligible for a tax credit under
14 this section, each partner shall be eligible for the tax credit
15 provided for in this section on the partner's income tax return
16 in proportion to the amount of income received by the partner
17 from the partnership. Any qualified business having taxable
18 income from the production of electric power, both within and
19 without the renewable energy opportunity zone, shall allocate
20 and apportion its taxable income attributable to that
21 production. Tax credits provided for in this section shall only
22 apply to taxable income of a qualified business attributable to



1 the production of electric power within the renewable energy
2 opportunity zone.

3 (c) In addition to any tax credit authorized under this
4 section, any qualified business shall be entitled to a tax
5 credit against any taxes due the State in an amount equal to a
6 percentage of unemployment taxes paid. The amount of the credit
7 shall be equal to:

8 (1) Eighty per cent of the unemployment taxes paid during
9 the first year;

10 (2) Seventy per cent of the taxes paid during the second
11 year;

12 (3) Sixty per cent of the taxes paid during the third
13 year;

14 (4) Fifty per cent of the taxes paid during the fourth
15 year;

16 (5) Forty per cent of the taxes paid during the fifth
17 year;

18 (6) Thirty per cent of the taxes paid during the sixth
19 year; and

20 (7) Twenty per cent of the taxes paid during the seventh
21 year.



1 (d) Tax credits provided for in subsection (c) shall only
2 apply to the unemployment tax paid on employees employed at the
3 qualified business' establishment or establishments located
4 within the renewable energy opportunity zone. Any tax credit
5 not usable shall not be applied to future tax years.

6 § -10 **State general excise and use tax exemptions.** The
7 director shall certify annually to the department of taxation
8 that any qualified business is exempt from the payment of
9 general excise taxes on the gross proceeds from the sale of
10 electric power to an energy utility for resale to the public.
11 The director shall also certify annually to the department of
12 taxation that any qualified business is exempt from the use tax
13 for purchases by the qualified business. The gross proceeds
14 received by a contractor licensed under chapter 444 shall be
15 exempt from the general excise tax for construction within a
16 renewable energy opportunity zone performed for a qualified
17 business within a renewable energy opportunity zone. The
18 exemption shall extend for a period not to exceed seven years.

19 § -11 **Local incentives.** A county may propose local
20 incentives to be made available in a renewable energy
21 opportunity zone, including:

22 (1) Reduction of permit fees;



- 1 (2) Reduction of user fees;
- 2 (3) Reduction of real property taxes; and
- 3 (4) Regulatory flexibility, including, but not limited to:
 - 4 (A) Special zoning districts;
 - 5 (B) Permit process reform;
 - 6 (C) Exemptions from local ordinances; and
 - 7 (D) Other public incentives,
- 8 which shall be binding upon the locality upon
- 9 designation of the renewable energy opportunity zone.

10 § -12 **Termination of energy opportunity zone.** Upon
 11 designation of an area as a renewable energy opportunity zone,
 12 the proposals for regulatory flexibility, tax incentives, and
 13 other public incentives specified in this chapter shall be
 14 binding upon the county governing body to the extent and for the
 15 period of time specified by the director pursuant to section

16 -3. If the county governing body is unable or unwilling to
 17 provide any of the incentives set forth in section -11 or
 18 other incentives acceptable to the director, and the director
 19 has not adopted rules pursuant to section -6 that supersede
 20 inconsistent ordinances and rules relating to the use, zoning,
 21 planning, and development of land and construction in a
 22 renewable energy opportunity zone, then the renewable energy



1 opportunity zone shall terminate. Qualified businesses located
2 in the renewable energy opportunity zone shall be eligible to
3 receive the state tax incentives provided by this chapter even
4 though the zone designation has terminated. No renewable energy
5 generator may become a qualified business after the date of zone
6 termination."

7 SECTION 3. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$, or so much
9 thereof as may be necessary for fiscal year 2008-2009, for the
10 department of business, economic development, and tourism, to
11 implement chapter , including the designation of renewable
12 energy opportunity zones and performing required environmental
13 impact statements.

14 The sums appropriated shall be expended by the department
15 of business, economic development, and tourism for the purposes
16 of this Act.

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 5. This Act shall take effect upon approval except
21 that section 3 shall take effect on July 1, 2008.

22



INTRODUCED BY:

Legislative
Assembly
Gov. Tom
Walsh



Report Title:

Renewable Energy Opportunity Zones

Description:

Requires director of business, economic development, and tourism, in consultation with advisory committee, to designate renewable energy opportunity zones, and determine types of energy generation for a zone, number of zones, and period of zones, and to perform required EIS for zones and expedite issuance of county permits.

