



GOV. MSG. NO. 796

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 7, 2009, the following bill was signed into law:

HB589 HD1 SD2 CD1

A BILL FOR AN ACT
RELATING TO RENEWABLE ENERGY
FACILITIES.
ACT 173 (09)

Sincerely,



LINDA LINGLE

Approved by the Governor

on JUL 7 2009

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

ACT 173
H.B. NO. 589
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

1 SECTION 1. The legislature finds that Hawaii's dependence
2 on petroleum for over ninety per cent of its energy needs is
3 greater than any other state in the nation. This makes the
4 State extremely vulnerable to any oil embargo, supply
5 disruption, international market dysfunction, and many other
6 factors beyond the control of the State. Furthermore, the
7 continued consumption of conventional petroleum fuel and price
8 volatility can negatively impact the environment and economic
9 health of the people of Hawaii. At the same time, Hawaii has
10 among the most abundant renewable energy resources in the world,
11 in the form of solar, geothermal, wind, biomass, and ocean
12 energy assets.

13 The legislature also finds that increased energy efficiency
14 and use of renewable energy resources would increase Hawaii's
15 energy self-sufficiency, achieving broad societal benefits,
16 including increased energy security, resistance to increases in
17 oil prices, environmental sustainability, economic development,
18 and job creation.

HB589 CD1 HMS 2009-3995



1 To shape Hawaii's energy and environmental future and
2 achieve the goal of energy self-sufficiency for the State,
3 efforts must continue on all fronts, integrating new and
4 evolving technologies, seizing upon opportunities to become more
5 economically diversified, and providing incentives and
6 assistance to address barriers.

7 To develop and finance renewable energy facilities, a site
8 for the facilities and access to the site must often be leased,
9 granted as an easement, or mortgaged to provide financing for
10 the project. Renewable energy projects may require site acreage
11 or configurations that do not coincide with existing, already
12 subdivided lot boundaries. For instance, land required for a
13 project may constitute only a portion of a large legal lot, and
14 it may be impractical or undesirable to lease or convey the
15 entire legal lot for the renewable energy project, or to
16 encumber the entire legal lot with a mortgage that provides
17 financing for the project. Currently, however, subdivision laws
18 and county ordinances generally prohibit the transfer of an
19 interest in land that is not an entire subdivided lot or
20 easement that has been approved by the applicable county. With
21 respect to land in the land court system, the additional step of
22 obtaining land court approval is required.



1 Reported Hawaii supreme court cases, including *Whitlow v.*
2 *Jennings*, 40 Haw. 523 (1954), have recognized that transactions
3 involving lots that have not been approved by the county
4 pursuant to subdivision laws or county ordinances may be
5 unenforceable. Unfortunately, the process of obtaining county,
6 state, and land court approval of subdivision and easement maps
7 is relatively time-consuming and often requires more than one
8 year to complete.

9 As recognized by the court in the *Whitlow v. Jennings* case,
10 the purpose of laws and ordinances requiring county subdivision
11 approval is to protect the public by ensuring adequate light,
12 air, fire protection, traffic safety, proper sanitation, and
13 drainage in the proposed subdivision and the protection of
14 innocent purchasers from buying lots upon which they could not
15 build because of the provisions of the various health and
16 sanitary statutes and regulations. However, these laws,
17 ordinances, and court rulings have placed in question the
18 validity of leases of parcels that are less than an entire legal
19 lot, and easements without subdivision approval. This prevents
20 or discourages the use or financing of leases and easements for
21 renewable energy projects.



1 A subdivision consisting of a solar energy facility or a
2 wind energy facility does not call for the same infrastructure
3 requirements as a housing subdivision. Further, the legislature
4 supports energy self-sufficiency by decreasing Hawaii's
5 dependence on fossil fuel with renewable energy projects. On
6 February 13, 2009, President Obama signed into law the American
7 Recovery and Reinvestment Act of 2009, Public Law No. 111-5,
8 also known as the Federal Stimulus Package, providing
9 \$62,000,000,000 in grant funding, loan guarantees, and tax
10 incentives for renewable energy and energy efficiency programs,
11 including \$6,000,000,000 for new loan guarantees aimed at
12 standard renewable projects, such as wind or solar projects, and
13 for electricity transmission projects; \$6,300,000,000 for energy
14 efficiency and conservation grants to help state and local
15 governments make investments that make them more energy
16 efficient and reduce carbon emissions; and \$500,000,000 to
17 prepare workers for careers in energy efficiency and renewable
18 energy fields.

19 The legislature further finds the original intent of
20 subdivision laws and ordinances, Hawaii's goal for energy self-
21 sufficiency, and obtaining financing for renewable energy



1 projects from private or public entities can be achieved at the
2 same time without compromising one for the other.

3 Accordingly, the purpose of this Act is to facilitate the
4 financing and development of renewable energy projects by
5 allowing leases and easements pertaining to renewable energy
6 projects, together with mortgages and other conveyances as
7 security for finance, to be created, enforced, and recorded,
8 without requiring the landowner to obtain formal subdivision
9 approval, and instead requiring approval for exemption from
10 subdivision requirements, from the applicable county or other
11 approving agency. This Act will also assist renewable energy
12 projects in Hawaii to be eligible for funding under the Federal
13 Stimulus Package.

14 SECTION 2. Chapter 201N, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§201N-A Exemption from subdivision requirements. (a)**

18 **Notwithstanding any other law or ordinance to the contrary:**

19 **(1) Lands within the agricultural or conservation state**
20 **land use district may be leased; and**



1 (2) Easements may be created and granted over lands within
2 the agricultural or conservation state land use
3 district,
4 for the purpose of developing and financing a renewable energy
5 project or accessing a renewable energy project that is a
6 permitted use in the district, even if the leased land or
7 easement area has not been subdivided as a separate subdivided
8 lot or easement. Leases and easements authorized by this
9 section shall be valid leases and easements for all purposes,
10 but the exemption from subdivision requirements authorized by
11 this section shall be subject to the requirements and
12 limitations set forth in subsection (d).

13 (b) Without limiting the generality of subsection (a), the
14 following may be performed without complying with subdivision
15 requirements:

16 (1) All or a portion of a legal lot may be leased as a
17 site for a renewable energy project or access to the
18 project;

19 (2) Easements or other possessory interests, whether
20 exclusive or nonexclusive, may be granted to use all
21 or a portion of the legal lot as a renewable energy
22 project site or access to the project;



1 (3) Maps, leases, licenses, grants of easements, or other
2 instruments providing for the right to use all or a
3 portion of a legal lot as delineated on a map for a
4 renewable energy project site or access to the project
5 may be recorded; and

6 (4) Mortgages and other security interests may be granted
7 with respect to any lease or easement created pursuant
8 to this section, and the holders of such mortgages or
9 other security interests may foreclose upon the lease
10 or easement covered and otherwise enforce the terms of
11 the mortgage and security documents, subject to
12 compliance with applicable laws other than subdivision
13 requirements.

14 (c) The land court, bureau of conveyances, and other
15 governmental agencies shall accept for filing and recording all
16 instruments and maps pertaining to leases, easements, mortgages,
17 and other security documents authorized pursuant to this
18 section.

19 (d) The exemption from subdivision requirements authorized
20 by this section shall only apply to leases and easements that
21 meet the following requirements and shall be subject to the
22 following limitations:



- 1 (1) The lease or easement shall restrict the use of the
2 leased land or easement area to the development and
3 operation of a renewable energy project; provided
4 that, to comply with section 205-4.6, agricultural
5 uses and activities shall not be restricted on
6 agricultural land;
- 7 (2) The lease shall have an initial term of at least
8 twenty years;
- 9 (3) With respect to leases and easements on lands within
10 an agricultural state land use district, the exemption
11 from subdivision requirements provided by this section
12 shall be for solar energy facilities permitted under
13 section 205-2(d)(6), on land with soil classified by
14 the land study bureau's detailed land classification
15 as overall (master) productivity rating class D or E;
- 16 (4) With respect to leases and easements on lands within a
17 conservation state land use district, the exemption
18 from subdivision requirements provided by this section
19 shall be for wind energy facilities, including the
20 appurtenances associated with the production and
21 transmission of wind-generated energy; and



1 (5) The county agency charged with administering
2 subdivisions in the county in which the renewable
3 energy project is to be situated or, if the land is in
4 a conservation state land use district, the department
5 of land and natural resources, shall approve the
6 exemption from subdivision requirements within ninety
7 days after the project's developer and the owner of
8 the land on which the renewable energy project is to
9 be situated have submitted the conceptual schematics
10 or preliminary plans and specifications for the
11 renewable energy project to the county agency or the
12 department of land and natural resources, and have
13 provided to such county agency or the department of
14 land and natural resources, as applicable, a
15 certification and agreement that all applicable and
16 appropriate environmental reviews and permitting shall
17 be completed prior to commencement of development of
18 the renewable energy project. If, on the ninety-first
19 day, an exemption has not been approved, it shall be
20 deemed disapproved by the county agency or the
21 department of land and natural resources, whichever is
22 applicable.



- 1 (e) Nothing in this section shall:
- 2 (1) Exempt the actual development, construction, or
3 operation of any use, project, or improvement from any
4 applicable state or county laws, ordinances,
5 restrictions, permits, or approvals, including
6 restrictions on allowable uses or conditions and
7 requirements for adequate infrastructure or mitigation
8 measures;
- 9 (2) Exempt renewable energy projects from any permit or
10 approval process under chapter 183C, 205, 205A, or
11 343;
- 12 (3) Exempt from subdivision requirements the conveyance of
13 any fee interest in land; or
- 14 (4) Prevent any agency or authority that issues permits or
15 approvals for renewable energy projects from imposing
16 reasonable and appropriate restrictions on the type of
17 siting, development, construction, and operation of a
18 renewable energy project to protect agricultural
19 resources and activities, the environment, natural
20 resources, cultural resources and activities, or the
21 health, safety, and welfare of the State.



1 (f) All agencies and authorities that issue permits or
2 approvals for renewable energy projects may adopt rules or
3 procedures to:

4 (1) Determine the type of renewable energy project that
5 may be allowed within an agricultural or conservation
6 district;

7 (2) Determine criteria for the appropriate siting of the
8 renewable energy project within an agricultural or
9 conservation district; and

10 (3) Identify mitigation measures applicable to renewable
11 energy projects to protect agricultural resources and
12 activities, the environment, natural resources,
13 cultural resources and activities, health, safety, and
14 welfare of the State.

15 (g) This section is not intended to diminish the
16 discretion of any agency or any authority to approve or
17 disapprove any permit application."

18 SECTION 3. Chapter 201N, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 **"§201N-B Subdivision exemptions in existence on June 30,**
22 **2013. (a) Any lease or easement (together with any mortgages**



1 or other documents encumbering either) that received a
2 subdivision exemption that is in existence on June 30, 2013, may
3 continue to be effective and shall continue to enjoy the
4 exemption from subdivision requirements granted under section
5 201N-A after that section is repealed on July 1, 2013; provided
6 that the following restrictions are complied with:

7 (1) The terms of the lease or easement shall restrict the
8 use of the leased land or easement area to the
9 development and operation of a renewable energy
10 project; provided that, to comply with section 205-
11 4.6, agricultural uses and activities shall not be
12 restricted on agricultural land; and

13 (2) The lease shall have an initial term of at least
14 twenty years.

15 (b) Notwithstanding that the leased land or easement area
16 is not a lot of record, the lease or easement that received the
17 subdivision exemption may be further encumbered, or any existing
18 encumbrance may be amended, extended, or cancelled, by
19 recordation of a document in the bureau or the land court, as
20 applicable, and the encumbrance shall only affect and encumber
21 the leased land or easement area. Encumbrances shall be subject
22 to applicable foreclosure laws, where applicable.



1 (c) The lease or easement may be transferred or assigned
2 by recordation of a document in the bureau or the land court, as
3 applicable; provided that the restrictions in subsection (a)(1)
4 and (2) are complied with and acknowledged by the transferee or
5 assignee in any conveyance or assignment document.

6 (d) The term of the lease or easement may be extended, and
7 the terms and conditions of the lease or easement may be amended
8 or modified; provided that the restrictions in subsection (a)(1)
9 and (2) are complied with, and that any material change to the
10 leased land or easement area shall be subject to subsection (e).

11 (e) Any material change after June 30, 2013, regarding the
12 leased land or easement area shall be subject to subdivision
13 requirements; provided that the county agency charged with
14 administering subdivisions (for land within the agricultural
15 state land use district) or the department of land and natural
16 resources (for land within the conservation state land use
17 district) shall deem all subdivision requirements from which the
18 lease or easement was exempt pursuant to the original
19 subdivision exemption to be met and the lease or easement shall
20 continue to be exempt from the requirements. The lease or
21 easement shall only be subject to the additional subdivision
22 requirements, if any, necessitated by the material change.



1 (f) For purposes of this section:

2 "Bureau" means the bureau of conveyances of the State of
3 Hawaii.

4 "Land court" means the office of the assistant registrar of
5 the land court of the State of Hawaii.

6 "Material change" means any material change affecting the
7 location, size, boundaries, or configuration of the leased land
8 or the easement area that would require state or county review
9 and approval under the subdivision requirements.

10 "Subdivision exemption" means the exemption to the
11 subdivision requirements received pursuant to section 201N-A.

12 "Subdivision requirements" means all state laws or county
13 ordinances and permits setting forth standards or requirements
14 for improvements and approvals applicable to the subdivision or
15 consolidation of land, changes in legal boundaries, or the
16 creation or consolidation of parcels, easements, or other
17 interest in land."

18 SECTION 4. Section 201N-1, Hawaii Revised Statutes, is
19 amended by adding a new definition to be appropriately inserted
20 and to read:

21 "Subdivision requirements" means all state laws or county
22 ordinances and permits setting forth standards or requirements



1 for improvements and approvals applicable to the subdivision or
2 consolidation of land, changes in legal boundaries, or the
3 creation or consolidation of parcels, easements, or other
4 interest in land."

5 SECTION 5. In codifying the new sections added by sections
6 2 and 3 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 6. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval;
11 provided that sections 2 and 4 of this Act shall be repealed on
12 July 1, 2013.

APPROVED this 7 day of JUL , 2009



GOVERNOR OF THE STATE OF HAWAII

