
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 has previously found that
2 Hawaii's dependence on petroleum for over ninety per cent of its
3 energy needs is more than any other state in the nation. This
4 makes the 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 further found that increased energy
14 efficiency and use of renewable energy resources would increase
15 Hawaii's energy self-sufficiency, achieving broad societal
16 benefits, including increased energy security, resistance to
17 increases in oil prices, environmental sustainability, economic
18 development, and job creation.



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



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

9 As recognized by the court in the *Whitlow v. Jennings* case,
10 the purpose of laws requiring county subdivision approval is to
11 protect the consumer purchasing interests in land from
12 substandard subdivisions. However, these laws and court rulings
13 have placed in question the validity of leases of parcels that
14 are less than an entire legal lot, and easements without
15 subdivision approval. This prevents or discourages utilization
16 of or financing on leases and easements for renewable energy
17 projects. The consumer protection purposes of subdivision laws
18 are not applicable or compelling with respect to sites for
19 renewable energy facilities and sophisticated parties developing
20 renewable energy projects. Those subdivision purposes are also
21 outweighed by the State's compelling interests in facilitating,



1 encouraging, and expediting renewable energy projects for the
2 health, safety, and welfare of the residents of Hawaii.

3 Accordingly, the purpose of this Act is to facilitate the
4 financing and development of renewable energy facilities by
5 allowing leases and easements pertaining to renewable energy
6 facilities, together with mortgages and other conveyances as
7 security for finance, to be created, enforceable, and
8 recordable, without requiring the landowner to obtain formal
9 subdivision approval from the applicable county or other
10 approving agency.

11 SECTION 2. Section 201N-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Subdivision requirements" means any state law, county
16 law, state permit, or county permit setting forth standards or
17 requirements for improvements, and approvals applicable to the
18 subdivision or consolidation of land, changes in legal
19 boundaries, or the creation or consolidation of lots, easements,
20 or other interest in land."

21 2. By amending the definition of "permit" to read as
22 follows:



1 ""Permit":

2 (1) Means any approval, no matter the nomenclature,
3 necessary for the siting, development, construction,
4 or operation of a renewable energy facility; except
5 that the term shall not include:

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

8 (B) Issuance by a county agency of a building or
9 grading permit; [~~or~~]

10 (C) Approval by the public utilities commission of a
11 power purchase agreement between a renewable
12 energy facility and a public utility; [~~and~~] or

13 (D) Approval of any subdivision requirements; and

14 (2) Includes:

15 (A) A state land use reclassification;

16 (B) A county development, community, or community
17 development plan amendment;

18 (C) A county zoning map amendment;

19 (D) A state conservation district use permit;

20 (E) A state special use permit for an agricultural or
21 rural district;

22 (F) A special management area permit;



- 1 (G) A shoreline setback variance; and
- 2 (H) A grant of an easement on state or county real
- 3 property."

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

7 "§201N- Exemption from subdivision requirements.
 8 Anything to the contrary notwithstanding, the siting,
 9 development, construction, or operation of any renewable energy
 10 facility shall be exempt from any subdivision requirements."

11 SECTION 4. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Renewable Energy Facility; Subdivisions

Description:

Exempts renewable energy facilities from subdivision requirements; defines "subdivision requirements".

