

---

---

# 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 further finds 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           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 encumber  
16 the entire legal lot with a mortgage that provides financing for  
17 the project. Currently, however, subdivision laws and county  
18 ordinances generally prohibit the transfer of an interest in  
19 land that is not an entire subdivided lot or easement that has  
20 been approved by the applicable county. With respect to land in  
21 the land court system, the additional step of obtaining land  
22 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 consumer purchasing interests in land  
12 from substandard subdivisions. However, these laws, ordinances,  
13 and court rulings have placed in question the validity of leases  
14 of parcels that are less than an entire legal lot, and easements  
15 without subdivision approval. This prevents or discourages the  
16 use or financing of leases and easements for renewable energy  
17 projects. The consumer protection purposes of subdivision laws  
18 and ordinances are not applicable or compelling with respect to  
19 sites for renewable energy projects and sophisticated parties  
20 developing renewable energy projects. Those subdivision  
21 purposes are also outweighed by the State's compelling interests  
22 in facilitating, encouraging, and expediting renewable energy

1 projects for the health, safety, and welfare of the residents of  
2 Hawaii.

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, 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. Chapter 201N, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14 **"§201N- Exemption from subdivision requirements. (a)**

15 Notwithstanding any other law or ordinance to the contrary:

16 (1) Lands within the agricultural, conservation, or rural  
17 state land use district may be leased; and

18 (2) Easements may be created and granted over lands within  
19 the agricultural, conservation, or rural state land  
20 use district,

21 for the purpose of developing and financing a renewable energy  
22 project or access to a renewable energy project that is a

1 permitted use in the district, even though the lease land or  
2 easement area has not been subdivided as a separate subdivided  
3 lot or easement. Leases and easements authorized by this  
4 section shall be valid leases and easements for all purposes,  
5 but the exemption from subdivision requirements authorized by  
6 this section shall be subject to the requirements and  
7 limitations set forth in subsection (d).

8 (b) Without limiting the generality of subsection (a), the  
9 following may be performed without complying with subdivision  
10 requirements:

11 (1) All or a portion of a legal lot may be leased as a  
12 site for a renewable energy project or access to such  
13 project;

14 (2) Easements or other possessory interests, whether  
15 exclusive or nonexclusive, may be granted to use all  
16 or a portion of the legal lot as a renewable energy  
17 project site or access to such project;

18 (3) Maps, leases, licenses, grants of easements, or other  
19 instruments providing for the right to use all or a  
20 portion of a legal lot as delineated on a map for a  
21 renewable energy project site or access to such  
22 project may be recorded; and

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

9       (c) The land court, bureau of conveyances, and other  
10      governmental agencies shall accept for filing and recording all  
11      instruments and maps pertaining to leases, easements, mortgages,  
12      and other security documents authorized pursuant to this  
13      section.

14      (d) The exemption from subdivision requirements authorized  
15      by this section shall only apply to leases and easements that  
16      meet the following requirements and shall be subject to the  
17      following limitations:

18      (1) The principal use of the leased land or easement area  
19      shall be the development and operation of a renewable  
20      energy project;

21      (2) The lease shall have an initial term of at least  
22      twenty years;

- 1       (3) Except for the exemption from subdivision requirements  
2       for leases and easements meeting the requirements of  
3       this section, nothing in this section shall exempt the  
4       actual development, construction, or operation of any  
5       use, project, or improvement from applicable state or  
6       county laws, ordinances, restrictions, permits, or  
7       approvals, including, without limitation, restrictions  
8       on allowable uses or conditions and requirements for  
9       adequate infrastructure or mitigation measures;
- 10       (4) Nothing in this section shall exempt from subdivision  
11       requirements the conveyance of any fee interest in  
12       land; and
- 13       (5) The exemption from subdivision requirements provided  
14       by this section shall terminate with respect to any  
15       lease or easement upon the first to occur of the  
16       following:
- 17       (A) The termination or abandonment of the renewable  
18       energy project; or
- 19       (B) The termination or expiration of the lease or  
20       easement."

1 SECTION 3. Section 201N-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read:

4 "Subdivision requirements" means all state laws or county  
5 ordinances and permits setting forth standards or requirements  
6 for improvements and approvals applicable to the subdivision or  
7 consolidation of land, changes in legal boundaries, or the  
8 creation or consolidation of parcels, easements, or other  
9 interest in land."

10 SECTION 4. New statutory material is underscored.

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



**Report Title:**

Renewable Energy Project; Subdivisions

**Description:**

Exempts leases and easements for renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing. (SD1)