

JAN 22 2009

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY PRODUCERS.

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

1           SECTION 1. Section 171-95, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§171-95 Disposition to governments, governmental**  
4 **agencies, public utilities, and renewable energy producers.** (a)

5 Notwithstanding any limitations to the contrary, except as  
6 provided in subsection (d) with regard to leases for renewable  
7 energy producers, the board of land and natural resources  
8 without public auction, may[~~, without public auction~~]:

9           (1) Sell public lands at [~~such~~] a price and on [~~such~~]  
10 other terms and conditions as the board may deem  
11 proper to governments, including the United States,  
12 city and county, counties, other governmental agencies  
13 authorized to hold lands in fee simple and public  
14 utilities;

15           (2) Lease to the governments, agencies, public utilities,  
16 and renewable energy producers public lands for terms  
17 up to, but not in excess of, sixty-five years at



1           [~~such~~] rental and on [~~such~~] other terms and conditions  
2           as the board may determine;

3           (3) Grant licenses and easements to the governments,  
4           agencies, public utilities, and renewable energy  
5           producers on [~~such~~] terms and conditions as the board  
6           may determine for road, pipeline, utility,  
7           communication cable, and other rights-of-way;

8           (4) Exchange public lands with the governments and  
9           agencies;

10          (5) Execute quitclaim deeds to the governments and  
11          agencies, with or without consideration, releasing any  
12          claim to the property involved made upon disputed  
13          legal or equitable grounds, whenever the board in its  
14          discretion deems it beneficial to the State; and

15          (6) Waive or modify building and other requirements and  
16          conditions contained in deeds, patents, sales  
17          agreements, or leases held by the governments and  
18          agencies whenever [~~such~~] the waiver or modification is  
19          beneficial to the State.

20          (b) In any disposition to public utilities under this  
21 section:



- 1           (1) The sale price or lease rental shall be no less than  
2           the value determined in accordance with section  
3           171-17(b); provided that [~~such~~] the sale price or  
4           lease rental may be on a nominal basis, if the board  
5           finds that [~~such~~] an easement is required in  
6           connection with a government project;
- 7           (2) The board shall provide that in case the land ceases  
8           to be used at any future time for the use for which  
9           the disposition was made, the board shall have the  
10          right to repurchase the land at the original sale  
11          price or fair market value, whichever is lower, and to  
12          purchase improvements thereon at the depreciated value  
13          or fair market value, whichever is lower;
- 14          (3) Disposition shall not be made to any public utility if  
15          the utility has suitable lands of its own;
- 16          (4) The disposition to public utilities shall be subject  
17          to disapproval by the legislature by two-thirds vote  
18          of either the senate or the house of representatives  
19          or by majority vote of both, in any regular or special  
20          session next following the date of the disposition;  
21          and



1           (5) For the purposes of this section, the definition of  
2           "public utility" as defined in section 269-1 is hereby  
3           incorporated herein by reference.

4           (c) For the purposes of this section, "renewable energy  
5 producer" means:

6           (1) Any producer of electrical or thermal energy produced  
7           by wind, solar energy, hydropower, landfill gas,  
8           waste-to-energy, ocean thermal energy conversion, cold  
9           seawater, wave energy, biomass, including municipal  
10          solid waste, biofuels or fuels derived from organic  
11          sources, hydrogen fuels derived primarily from  
12          renewable energy, or fuel cells where the fuel is  
13          derived primarily from renewable sources that sell all  
14          of the net power produced from the demised premises to  
15          an electric utility company regulated under chapter  
16          269 or that sells all of the thermal energy it  
17          produces to customers of district cooling systems;  
18          provided that up to twenty-five per cent of the power  
19          produced by a renewable energy producer and sold to  
20          the utility or to district cooling system customers  
21          may be derived from fossil fuels; or



1           (2) Any grower or producer of plant or animal materials  
2           used primarily for the production of biofuels or other  
3           fuels; provided that nothing herein is intended to  
4           prevent the waste product or byproduct of the plant or  
5           animal material grown or produced for the production  
6           of biofuel, other fuels, electrical energy, or thermal  
7           energy, from being used for other useful purposes.

8           (d) The board may lease or renew a lease of public lands  
9           to renewable energy producers under subsection (a)(2) only  
10          pursuant to a public process that includes public notice under  
11          section 1-28.5 providing other interested renewable energy  
12          producers opportunity to participate in the process; provided  
13          that the renewable energy producer shall be required to submit  
14          as part of the proposal for the board's evaluation, as assisted  
15          by the department of business, economic development, and  
16          tourism, the following:

- 17           (1) A timeline for completion of the project;  
18           (2) Evidence of the financial ability of the renewable  
19           energy producer to complete the project;  
20           (3) A description of the conceptual design of the project;  
21           (4) A description of the business concept for the project;



- 1        (5) Documentation on the technical viability of the  
2        project; and
- 3        (6) Evidence that the renewable energy producer has relied  
4        upon securing private land to the fullest extent  
5        reasonable under the circumstances and that the  
6        project is not exclusively dependent upon acquiring  
7        state land.

8        Upon completion of the board's evaluation and determination  
9        to award or not award a lease to a renewable energy producer,  
10       the board shall prepare a report outlining the reasons for the  
11       decision.

12       A lease to a renewable energy producer under this  
13       subsection shall not result in the termination of a lease of  
14       public land held by an existing lessee who is currently in  
15       compliance with the terms of the lease.

16       For the purpose of informing the public prior to the lease  
17       of public land or the renewal of a lease of public land for a  
18       proposed renewable energy project under this subsection, the  
19       department of land and natural resources shall conduct not less  
20       than two public hearings in the county where the public land to  
21       be leased for the proposed renewable energy project is located;  
22       provided that the notice of the hearing shall be published as



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1 provided in section 1-28.5. The board shall prepare and  
2 distribute an outline of the proposals for the renewable energy  
3 project and receive testimony from interested parties and the  
4 general public at each public hearing."

5 SECTION 2. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

*Myra Hill*

*By \_\_\_\_\_  
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**Report Title:**

DLNR; Renewable Energy Producer; Public Notice; Public Lands;  
Lease

**Description:**

Requires that the board of land and natural resources conduct public hearings prior to awarding a lease of public land to a renewable energy producer.

