THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 868 S.D. 2 H.D. 1

A BILL FOR AN ACT

RELATING TO ENERGY RESOURCES.

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

SECTION 1. The legislature finds that there is a need to coordinate the development of the State's energy resources to preserve energy security by increasing the use of indigenous renewable energy and reducing the State's overdependence on oil. The legislature also finds that energy data and analysis are essential to energy planning, policy development, and energy emergency preparedness and response. In recent years, energy markets, resources, systems and technologies, the variety and types of fuels, environmental standards and specifications of fuels, and policies related to energy and fuels have all undergone dramatic changes. Current and future transitional trends are expected to continue to influence Hawaii's energy situation. These events reveal a critical need to develop the State's technical and analytic capabilities and understanding of Hawaii's energy resources, markets, and systems for effective energy planning to achieve energy independence and increase the State's energy security.

The legislature also finds that the director of business, economic development, and tourism, who serves as the state energy resources coordinator pursuant to section 196-3, Hawaii Revised Statutes, is responsible for coordinating the development of the State's energy resources, policies, programs, and plans.

The energy data and analytic functions of the state energy resources coordinator are statutorily distinct from, and not redundant to other agencies' functions. The public utilities commission, for example, functions as a state watchdog, focusing primarily on monitoring petroleum prices and industry profits.

The legislature, in Act 182, Session Laws of Hawaii 2007, explicitly acknowledged the difference between the department of business, economic development, and tourism's energy analysis role and the public utilities commission's role to conduct analysis with a focus on petroleum prices and petroleum industry profits. The statute directed the department of business, economic development, and tourism to use this data to effectuate the purposes of chapters 125C and 196, Hawaii Revised Statutes, and other relevant laws. The legislature recognized that the use and analysis of energy and fuels data remains critical to virtually all of the department of business, economic

development, and tourism's statutory energy program functional requirements.

It is essential and appropriate to include within chapter 196, Hawaii Revised Statutes, that the department of business, economic development, and tourism shall be responsible for developing and ensuring the achievement of the State's energy policies, programs, and plans.

Therefore, the legislature finds that it is necessary to amend chapter 196, Hawaii Revised Statutes, to:

(1) Update certain definitions for clarity, taking into account the changes in the State's energy resources, markets, and systems;

(2) Establish definitive policy guidance needed on the nature and relationship of energy data analyses to the State's energy program, and to clearly delineate distinctive analytic roles and responsibilities of state agencies conducting energy data functions; and

(3) Provide the statutory basis for a systematic state energy analytic capacity and capability, which is essential to support the energy resources coordinator's role.

SECTION 2. Section 196-1, Hawaii Revised Statutes, is amended to read as follows:

"**§196-1 Findings and declaration of necessity.** The legislature finds that:

(1) The global demand for petroleum and its derivatives has resulted in a significant and fundamental market escalation in oil prices, has caused severe economic hardships throughout the [~~State~~] state, and threatens to impair the public health, safety, and welfare.

The State of Hawaii, with its near total dependence on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market. This [~~is an anomalous~~] situation[~~,~~] can be changed, as there are few places in the world so generously endowed with natural energy: geothermal, solar radiation, ocean temperature differential, wind, biomass, waves, and currents[~~—~~] which are all potential non-polluting power sources;

(2) There is a real need for comprehensive strategic [~~comprehensive~~] planning in the effort towards achieving full [~~utilization~~] use of Hawaii's energy [~~resource programs~~] resources and the most effective

allocation of energy resources throughout the [~~State.~~] state. Planning is necessary and desirable in order that the State may recognize and declare the major problems and opportunities in the field of energy resources. Both short-range and long-range planning will permit the articulation of:

(A) Broad policies, goals, and objectives;

(B) Criteria for measuring and evaluating accomplishments of objectives;

(C) Identification and implementation of programs that will carry out such objectives; and

(D) A determination of requirements necessary for the optimum development of Hawaii's energy resources.

Such planning efforts will identify present conditions and major problems relating to energy resources, their exploration, development, production, and distribution. It will show the projected nature of the situation and rate of change [~~and~~], present conditions for the foreseeable future based on a projection of current trends in the development of energy resources in Hawaii [~~.~~], and include initiatives designed to fundamentally change how Hawaii consumes

energy by accelerating the production of renewable and alternative energy, increasing energy efficiency, developing and adopting new technologies, and ensuring the State's energy security;

(3) The State requires an in-depth understanding of the causes and effects of any transitional issues and trends related to changes in the State's energy resources, systems, and markets;

[~~(3)~~] (4) There are many agencies of the federal, state, and county governments in Hawaii, as well as many private agencies[~~,~~] and a broad set of non-governmental entities, engaged in, or expressing an interest in, various aspects of the exploration, research, distribution, transportation, storage, conservation, and production of all forms of energy resources in Hawaii. Some of these agencies include the University of Hawaii[~~,~~]; the department of land and natural resources[~~,~~]; the department of business, economic development, and tourism[~~,~~]; the division of consumer advocacy[~~,~~]; the public utilities commission; the state civil defense agency; the federal energy office[~~,~~]; and various county agencies, as well as

[~~the oil companies, gas stations, and other private enterprises,~~] Hawaii's energy and energy-related companies; and

[~~(4)~~] (5) There is [~~immediate~~] an ongoing need in this state to coordinate the efforts of [~~all these agencies,~~] statewide industry and government energy interests; maintain the technical capability and adequate capacity to quantitatively and qualitatively evaluate, analyze, develop, and coordinate implementation of private and public sector energy planning efforts; recommend market-based policies to develop Hawaii's energy resources, systems, and markets; establish and coordinate programs to preserve and protect the State's energy security, maintain a robust energy emergency preparedness program, and effectuate the conservation of [~~fuel,~~] energy resources to provide for the equitable distribution thereof[~~,~~]; and to formulate plans for the development and use of alternative energy sources. There is a need for [~~such~~] coordination, capability, and capacity so that there will be maximum conservation and

[~~utilization~~] use of energy resources in the [~~State.~~] state."

SECTION 3. Section 196-2, Hawaii Revised Statutes, is amended as follows:

1. By adding twelve new definitions to be appropriately inserted and to read:

""Agent" means a person who is designated by the coordinator as an authorized representative.

"Commission" means the public utilities commission.

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

"Distributor" means:

(1) Every person who refines, manufactures, produces, or compounds fuel in the state and sells it at wholesale or retail, or who uses it directly in the manufacture of products or for the generation of power;

(2) Every person who imports or causes to be imported into the state, or exports or causes to be exported from the state, any fuel;

(3) Every person who acquires fuel through exchanges with another distributor; and

(4) Every person who purchases fuel for resale at wholesale or retail rates from any person described in paragraph (1), (2), or (3).

"Electricity" means all electrical energy produced by combustion of any fuel as defined in this section, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, and waves, or any other source.

"Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

"Fuel" means fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture that may be manufactured, grown, produced, or imported into the state or that may be exported therefrom, including petroleum and petroleum products and gases to include all fossil fuel-based gases, coal tar, vegetable ferments, biomass, municipal solid waste, biofuels, hydrogen, agricultural products used as fuels and as feedstock to produce fuels, and all fuel alcohols.

"Major energy marketer" means any person who sells energy resources in amounts determined by the coordinator as having a major effect on the supply of or demand for energy resources.

"Major energy producer" means any person who produces energy resources in amounts determined by the coordinator as having a major effect on the supply of or demand for energy resources.

"Major energy transporter" means any person who transports energy resources in amounts determined by the coordinator as having a major effect on the supply of or demand for energy resources.

"Major energy user" means any person who uses energy resources in the manufacture of products or for the generation of electricity in amounts determined by the coordinator as having a major effect on the supply of or demand for energy resources.

"Major fuel storer" means any person who stores fuels in amounts determined by the coordinator as having a major effect on the supply of or demand for energy resources."

2. By amending the definition of "energy resources" to read:

""Energy resources" means [~~and includes fossil fuel, nuclear, geothermal, solar, hydropower, wind, and other means of generating energy.~~] fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and

fuels manufacture, that may be manufactured, grown, produced, or imported into the state or that may be exported therefrom, including petroleum and petroleum products and gases, and all fossil fuel-based gases, coal tar, vegetable ferments, biomass, municipal solid waste, biofuels, hydrogen, agricultural products used as fuels and as feedstock to produce fuels, and all fuel alcohols. Energy resources also includes all electrical or thermal energy produced by combustion of any fuel, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, waves, or any other source."

SECTION 4. Section 196-4, Hawaii Revised Statutes, is amended to read as follows:

"**§196-4 Powers and duties.** Subject to the approval of the governor, the coordinator shall:

(1) Formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the optimum development of Hawaii's energy resources;

(2) Conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other

organizations and recommend to the governor and to the legislature programs [~~which~~] that represent the most effective allocation of resources for the development of energy [~~sources,~~] resources;

(3) Formulate and recommend specific proposals, as necessary, for conserving energy [~~and fuel,~~] resources, including the allocation and distribution thereof, to the governor and to the legislature;

(4) Assist public and private agencies in implementing energy conservation and related measures;

(5) Coordinate the State's energy conservation and allocation programs with that of the federal government, other state governments, governments of nations with interest in common energy resources, and the political subdivisions of the State;

(6) Develop programs to encourage private and public exploration and research of alternative energy resources [~~which~~] that will benefit the [~~State;~~] state;

(7) Conduct public education programs to inform the public of the energy resources situation, as it may exist,

from time to time and of the government actions taken [~~thereto~~];

(8) Serve as consultant to the governor, public agencies, and private industry on matters related to the acquisition, [~~utilization~~] use, and conservation of energy resources;

(9) Contract for services when required for the implementation of this chapter;

(10) Review proposed state actions [~~which~~] that the coordinator finds to have significant effect on energy [~~consumption~~] resources and report to the governor their effect on the energy conservation program, and perform such other services as may be required by the governor and the legislature;

(11) Prepare and submit an annual report and [~~such~~] other reports as may be requested to the governor and to the legislature on the implementation of this chapter and all matters related to energy resources; [~~and~~]

(12) Adopt rules for the administration of this chapter pursuant to chapter 91[~~,~~]; provided that the rules shall be submitted to the legislature for review[~~.~~]; and

(13) Develop and maintain a comprehensive and systematic quantitative and qualitative capacity to analyze the status of energy resources, systems, and markets, both in-state and those to which Hawaii is directly tied, particularly in relation to the State's economy, and to recommend, develop proposals for, and assess the effectiveness of policy and regulatory decisions, and conduct energy emergency planning."

SECTION 5. Section 196-6, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§196-6[~~]~~] **Energy efficient storage hot water heaters.** (a) No new storage hot water heater which is not certified as meeting the energy efficiency standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as set forth as the current ASHRAE 90 Standard, shall be sold or installed in the [~~State~~] state after June 1, 1985; provided, however, that nothing contained herein shall prevent sales from being made in the [~~State~~] state for use outside the [~~State.~~] state. [~~Upon May 18, 1984, no retail seller or distributor shall increase their inventory of storage hot water heaters which are not certified as being in compliance with the current ASHRAE 90 Standard, and all storage hot water heaters sold after~~

~~June 1, 1985, shall be certified by the manufacturer, or the retailer, or both, as being in compliance with the current ASHRAE 90 Standard.~~

~~(b) Within ninety days after May 18, 1984, the energy resources coordinator or its successor entity shall notify, in writing, all retail sellers and distributors of storage hot water heaters doing business in this State, of the provisions of this section.~~

~~(c) Any~~] (b) Any violation of subsection (a) shall be a misdemeanor; provided a fine of not less than $50 nor more than $500 shall be imposed, and all fines shall be imposed consecutively. Each storage hot water heater sold in violation of this section shall constitute a separate offense."

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

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

S.B. NO. 868
S.D. 2
H.D. 1

Report Title:
Energy Resources; Power Generation Utilities, Transportation Fuels; State Energy Resources Coordinator

Description:
Addresses deficiencies in Hawaii's energy resources coordination statutes. Provides policy guidance to ensure adequate detail on the nature and relationship of the energy data analysis functions of the state energy resources coordinator and energy program. (SB868 HD1)