



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEES ON
ENERGY & ENVIRONMENTAL PROTECTION
and
WATER, LAND & OCEAN RESOURCES**
Tuesday, February 24, 2009
10:00 a.m.
State Capitol, Conference Room 325

Bill No. 589

Support Y N

Date 2/23/09

Time 1408

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in consideration of

**HB589
RELATING TO RENEWABLE ENERGY FACILITIES.**

Chairs Ito and Morita, Vice Chairs Har and Coffman, and Members of the
Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports HB589. The purpose of HB589 is to facilitate the financing and development of renewable energy facilities by allowing leases and easements pertaining to renewable energy facilities, together with mortgages and other conveyances as security for finance, to be created, enforceable, and recordable, without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency. There exists considerable acreage of what was once agricultural land that is now sitting idle and is considered of marginal value for agriculture. Some of these sites may be well suited for solar and wind facilities. This bill would streamline the permitting process by ensuring that only those requirements necessary for health and safety are imposed.

In order to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide

financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, consider a parcel that is roughly thirty (30) acres in size. A renewable energy developer may want to develop a solar farm on the parcel that is only five (5) acres in size. Under the current subdivision laws, the renewable energy developer would be required to encumber the entire legal lot with a mortgage that provides financing for the project. Currently subdivision laws generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is also required. In effect, the developer is forced to risk the entire thirty (30) acres of land in order to finance the solar farm on five (5) acres of land. These laws prevent or discourage utilization of or financing on leases and easements for renewable energy projects.

A land owner could subdivide his or her parcel to allow for the financing, but this process is fairly long and involved, in some cases taking several years. HB589 will help expedite the financing and development of renewable energy facilities by allowing leases and easements pertaining only to renewable energy facilities to be created for mortgages and other conveyances without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency. There is no doubt that facilitating the siting of renewable energy facilities will play an integral role in meeting the State's targets for 70% clean energy by 2030.

Thank you for the opportunity to offer these comments.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUÉ
ACTING DIRECTOR

ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 24, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources

The Honorable Hermina M. Morita, Chair
and Members of the Committee on Energy &
Environmental Protection
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Ito, Morita and Members:

**Subject: House Bill No. 589
Relating to Renewable Energy Resources**

Although we strongly support renewable energy facilities and other activities, which can make Hawaii less dependent on petroleum fuel, the Department of Planning and Permitting **cannot support** House Bill 589.

The bill calls for exempting renewable energy facilities from any subdivision requirements. Unfortunately, we have some serious issues with this bill:

1. Exempting renewable energy facilities from subdivision requirements will create a separate set of subdivision records that will not be recognized by the counties. We believe that this will potentially create confusion and complications for the community and governmental agencies. If subdivision parcels are not recognized by the counties, we believe that it would be difficult to buy, sell, develop, and finance real estate. The owners and tenants of these parcels will probably have difficulties with matters relating to real property taxes, obtaining permits, and obtaining utility connections.

Bill No. HB 589

Support (Y) N

Date 2/23

Time 1337

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The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources

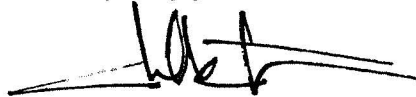
The Honorable Hermina M. Morita, Chair
and Members of the Committee on Energy &
Environmental Protection
State House of Representatives
Re: House Bill No. 589
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2. One important aspect of the county subdivision process is to provide subdivided lots, as well as the neighboring properties, with adequate county infrastructure, which includes roadways, water, and sewer. This bill lacks language which relates to requiring adequate infrastructure to the subdivided parcel and the surrounding community.
3. If this bill is passed, and subdivision parcels are created, what will happen if, in the future, a renewable energy facility ceases operations? Will the subdivided parcel become invalid and the property lines become null and void?

We respectfully recommend that House Bill 589 be filed or rewritten.

Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Acting Director
Department of Planning and Permitting

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hb589-mft.doc

Castle & Cooke
Hawai'i

Merry S. Saunders
Counsel

February 23, 2009

The Honorable Hermina M. Morita, Chair
and Members of the Energy and Environmental
Protection Committee
The Honorable Ken Ito, Chair
and Members of the Water, Land and
Ocean Resources Committee
Hawai'i House of Representatives
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Morita, Chair Ito and Members of the Committees:

Subject: ***HB 589 Relating to Renewable Energy Facilities; Subdivision
Hearing 10:00 a.m., February 24, 2009
Capital Conference Room 325***

Castle & Cooke supports HB 589 that exempts renewable energy facilities from subdivision requirements for development and financing of renewable energy facilities. To achieve this intent, we respectfully offer certain revisions and amendments to HB 589 for your consideration, which are incorporated into the marked, revised draft of HB 589 attached to this testimony.

These revisions generally:

- In Section 2, delete amendments to the definition of "permit" which are confusing and appear unnecessary.
- In Section 3, refine the language and narrow the scope of the exemption from subdivision requirements to clarify that this exemption applies to subdivision for creation of leases and easements on portions of lots for development and financing of renewable energy projects.

This exemption is patterned after an existing subdivision exemption for agricultural leases as set forth in HRS 205-4.5(f), to facilitate leasing and financing of farms on portions of larger legal lots. The HB 589 exemption is similarly necessary to facilitate development and financing of renewable energy projects on portions of larger legal lots for the following reasons:

Bill No. 589

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Time 948

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The Honorable Ken Ito
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Land requirements for large scale renewable energy projects may not conform to the configuration of large legal lots. Where land needed for a renewable energy project is much less than the entire large legal lot, it may be impractical to lease, convey or mortgage the entire legal lot for the project. However, leases, conveyances and mortgages of only portions of a legal lot are not recognized under Hawai'i law, and this creates issues for development and financing of renewable energy projects that cover less than an entire legal lot.

As a result of this issue, subdivision is likely to be required for prudent development and financing of a large scale project. However, subdivision of a legal lot for a renewable energy project in Hawai'i could take over two years.

HB 589, as amended, would give legal recognition to leases of portions of large legal lots for development and financing of renewable energy facilities. The lot would be surveyed and registered but exempted from subdivision process and requirements; thereby reducing substantial time and uncertainty and facilitating early financing to move the renewable energy project forward.

It is important to note that HB 589 does not avoid or exempt the actual renewable energy project from any environmental or other reviews, permits or approvals, or the standards, protections or mitigation conditions required under such permits and approvals. HB 589 only eliminates a time consuming procedure that is unnecessary in the context of a renewable energy facility lease, especially in light of the compelling public interest in facilitating renewable energy projects.

On behalf of Castle & Cooke I respectfully request your support of HB 589 which will facilitate development and financing of renewable energy projects. Mahalo for your consideration of our testimony. If you have any questions, please feel free to contact us:

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Richard Mirikitani, Senior Vice President and Counsel
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The Honorable Hermina M. Morita and
The Honorable Ken Ito
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Carleton Ching, Vice President – Community and Government Relations
Castle & Cooke Hawai'i
cching@castlecooke.com
Phone: 548-3776

Sincerely,

CASTLE & COOKE HAWAI'I

A handwritten signature in black ink, appearing to read 'H. Saunders', with a long horizontal flourish extending to the right.

Harry A. Saunders
President

attachment

SUGGESTED REVISIONS BY CASTLE & COOKE 2/24/09

Report Title:

Renewable Energy Facility; Subdivisions

Description:

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

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

H.B. NO. 589

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

SECTION 1. The legislature has previously found that Hawaii's dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the environment and economic health of the people of Hawaii. At the same time, Hawaii has among the most abundant renewable energy resources in the world,

in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature further found that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

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

In order to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may be only a portion of a large legal lot, and it may be impractical or undesirable to lease or convey the entire legal lot for the renewable energy project or to encumber the entire legal lot with a mortgage that provides

financing for the project. Currently, however, subdivision laws generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is required.

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

As recognized by the court in the *Whitlow v. Jennings* case, the purpose of laws requiring county subdivision approval is to protect the consumer purchasing interests in land from substandard subdivisions. However, these laws and court rulings have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without subdivision approval. This prevents or discourages utilization of or financing on leases and easements for renewable energy projects. The consumer protection purposes of subdivision laws are not applicable or compelling with respect to sites for

renewable energy facilities and sophisticated parties developing renewable energy projects. Those subdivision purposes are also outweighed by the State's compelling interests in facilitating, encouraging, and expediting renewable energy projects for the health, safety, and welfare of the residents of Hawaii.

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

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

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

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

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

~~"Permit":~~

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

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

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

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

~~(D) Approval of any subdivision requirements; and~~

~~(2) Includes:~~

~~(A) A state land use reclassification;~~

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

~~(C) A county zoning map amendment;~~

~~(D) A state conservation district use permit;~~

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

~~(F) A special management area permit;~~

~~(C) A shoreline setback variance; and~~

~~(H) A grant of an easement on state or county real property.~~ "delete section 2 language

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

"§201N- Exemption from subdivision requirements.

~~Anything to the contrary notwithstanding, the siting, development, construction, or operation of any renewable energy facility shall be exempt from any subdivision requirements."~~

~~Notwithstanding any other law to the contrary, to facilitate development and financing of renewable energy facilities, agricultural, conservation and rural lands may be subdivided and leased, and easements may be created and granted over agricultural, conservation and rural lands, for the purpose of development and financing of renewable energy facility uses permitted in such districts. Lots created and leased and easements granted by the fee owner thereof pursuant to this section, shall be legal lots and easements of record for leasing, grants of easements and mortgage lending purposes and shall be exempt from subdivision requirements.~~

~~Without limiting the generality of the foregoing, it shall be lawful for the fee owner of a parcel of land to do the following without obtaining subdivision approval from the state or county authority charged with regulating subdivisions of such land:~~

~~(a) To lease all or a portion of such parcel of land as a site for a renewable energy facility or access to such facility;~~

~~(b) To grant easements or other possessory interests, whether exclusive or nonexclusive, to use all or a portion of such parcel as a renewable energy facility site or access to such facility;~~

~~(c) To record a map, lease, license, grant of easement, or other instrument providing for the right to use all or a portion~~

of a parcel of land as delineated on a map for a renewable energy facility site or access to such facility; and

(d) To mortgage and assign for security purposes interests in such leases and easements.

The Land Court, Bureau of Conveyances and other government agencies shall accept for recording and filing all instruments and maps pertaining to lots and easements delineated pursuant to this section.

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

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

INTRODUCED BY: _____