
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

1 SECTION 1. Act 173, Session Laws of Hawaii 2009 (Act 173),
2 recognized that to develop and finance renewable energy
3 facilities, a site for the facilities and access to the site
4 must often be leased, granted as an easement, or mortgaged to
5 provide financing for the project. However, renewable energy
6 projects may require site acreage or configurations that do not
7 coincide with existing, already subdivided lot boundaries. For
8 instance, land required for a project may constitute only a
9 portion of a large legal lot, and it may be impractical or
10 undesirable to lease or convey the entire legal lot for a
11 renewable energy project, or to encumber the entire legal lot
12 with a mortgage that provides financing for the project.

13 Therefore, the purpose of Act 173 was to facilitate the
14 financing and development of renewable energy projects by
15 allowing leases and easements pertaining to renewable energy
16 projects, together with mortgages and other conveyances as
17 security for finance, to be created, enforced, and recorded,
18 without requiring the landowner to obtain formal subdivision



1 approval, and instead requiring approval for exemption from
2 subdivision requirements, from the applicable county or other
3 approving agency.

4 However, the application of Act 173 was limited to solar
5 energy facilities permitted under section 205-2(d)(6), Hawaii
6 Revised Statutes, on land with soil classified by the land study
7 bureau's detailed land classification as overall (master)
8 productivity rating class D or E or wind energy facilities and
9 related appurtenances located within a conservation state land
10 use district. The legislature now finds that there may be other
11 renewable energy facilities that have been approved or permitted
12 by the appropriate agencies that are required to go through the
13 subdivision process threatening the financial viability of these
14 projects.

15 Therefore, the purpose of this Act is to extend the
16 applicability of Act 173 to include any renewable energy
17 facilities approved by the land use commission or county
18 planning commission under chapter 205, Hawaii Revised Statutes,
19 or any renewable energy facilities permitted or approved by the
20 board of land and natural resources under chapter 183C, Hawaii
21 Revised Statutes. Further, it is the intent of the legislature
22 that the remaining land (i.e., the portion of the original legal



1 lot of record less the area used for the renewable energy
2 facility) receive the same legal lot status as the renewable
3 energy parcel and be recognized as a legal lot of record by the
4 counties, thus allowing for those remaining lands to be put to
5 other use and to receive mortgage financing and title insurance.

6 SECTION 2. Section 201N-14, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§~~201N-14~~§~~ Exemption from subdivision requirements.

9 (a) Notwithstanding any other law or ordinance to the contrary:

10 (1) Lands within the urban, rural, agricultural, or
11 conservation state land use district may be leased;
12 and

13 (2) Easements or other possessory interests, whether
14 exclusive or non-exclusive, may be created and granted
15 over lands within the urban, rural, agricultural, or
16 conservation state land use district,

17 for the purpose of developing and financing a renewable energy

18 ~~[project]~~ facility or accessing a renewable energy ~~[project]~~

19 facility that is a permitted use in the district, even if the

20 leased land or the easement or other possessory interest area

21 has not been subdivided as a separate subdivided lot or

22 easement. In order to facilitate the productive use of the land



1 other than the land on which the renewable energy facility is
2 located or from which it is accessed, the remaining portion of
3 the parcel from which the land derives shall be entitled to the
4 benefit of this section for uses otherwise permitted in the
5 district. Leases [and], easements, and other possessory
6 interests authorized by this section shall be valid leases
7 [and], easements, and other possessory interests for all
8 purposes, but the exemption from subdivision requirements
9 authorized by this section shall be subject to the requirements
10 and limitations set forth in subsection (d).

11 (b) Without limiting the generality of subsection (a), the
12 following may be performed without complying with subdivision
13 requirements:

14 (1) All or a portion of a legal lot may be leased as a
15 site for a renewable energy [~~project~~] facility or
16 access to the [~~project~~] facility and the remainder of
17 the legal lot may be leased for uses otherwise
18 permitted in the district;

19 (2) Easements or other possessory interests, whether
20 exclusive or nonexclusive, may be granted to use all
21 or a portion of the legal lot as a renewable energy
22 [~~project~~] facility site or access to the [~~project,~~]



1 facility and easements or other possessory interests,
2 whether exclusive or non-exclusive, may be granted on
3 the remainder of the legal lot for uses otherwise
4 permitted in the district;

5 (3) Maps, leases, licenses, grants of easements, or other
6 instruments providing for the right to use all or a
7 portion of a legal lot as delineated on a map for a
8 renewable energy [~~project~~] facility site or access to
9 the [~~project~~] facility or for the remainder of the
10 legal lot may be recorded; and

11 (4) Mortgages and other security interests may be granted
12 with respect to any lease [~~or~~], easement, or other
13 possessory interest created pursuant to this section,
14 and the holders of such mortgages or other security
15 interests may foreclose upon the lease [~~or~~], easement,
16 or other possessory interest covered and otherwise
17 enforce the terms of the mortgage and security
18 documents, subject to compliance with applicable laws
19 other than subdivision requirements.

20 (c) The land court, bureau of conveyances, and other
21 governmental agencies shall accept for filing and recording all
22 instruments and maps pertaining to leases, easements, other



1 possessory interests, mortgages, and other security documents
2 authorized pursuant to this section.

3 (d) The exemption from subdivision requirements authorized
4 by this section shall only apply to leases [~~and~~], easements, and
5 other possessory interests that meet the following requirements
6 and shall be subject to the following limitations:

7 (1) The lease [~~or~~], easement, or other possessory interest
8 relating to a renewable energy facility shall restrict
9 the use of the leased land or easement area to the
10 development and operation of a renewable energy
11 [~~project,~~] facility; provided that, to comply with
12 section 205-4.6, agricultural uses and activities
13 shall not be restricted on agricultural land;

14 (2) The lease, easement, or other possessory interest
15 relating to a renewable energy facility shall have an
16 initial term of at least twenty years;

17 (3) With respect to leases, easements, and other
18 possessory interests relating to a renewable energy
19 facility on lands within urban and rural state land
20 use districts, the exemption from subdivision
21 requirements provided in this section shall be only
22 for renewable energy facilities using or producing



1 biomass or biofuels, including the appurtenances
2 associated with the production and transmission of
3 energy;

4 (4) With respect to leases [~~and~~], easements, and other
5 possessory interests relating to a renewable energy
6 facility on lands within an agricultural state land
7 use district, the exemption from subdivision
8 requirements provided by this section shall be for
9 [~~solar~~]:

10 (A) Solar energy facilities permitted under section
11 205-2(d)(6), on land with soil classified by the
12 land study bureau's detailed land classification
13 as overall (master) productivity rating class D
14 or E;

15 (B) Any renewable energy facilities approved by the
16 land use commission or county planning commission
17 under chapter 205; and

18 (C) Any renewable energy facility using or producing
19 biomass or biofuels;

20 [~~4~~] (5) With respect to leases [~~and~~], easements, and
21 other possessory interests relating to a renewable
22 energy facility on lands within a conservation state



1 land use district, the exemption from subdivision
2 requirements provided by this section shall be for
3 ~~[wind]~~:

4 (A) Wind energy facilities, including the
5 appurtenances associated with the production and
6 transmission of wind-generated energy; and

7 (B) Any renewable energy facilities permitted or
8 approved by the board of land and natural
9 resources under chapter 183C;

10 ~~[-(5)]~~ (6) With respect to leases, easements, and other
11 possessory interests on the remaining portion of the
12 legal lot, other than where the renewable energy
13 facility is located or from which it is accessed, the
14 exemption from subdivision requirements provided in
15 this section shall be for the entirety of that
16 remaining portion of the legal lot; and

17 (7) The county agency charged with administering
18 subdivisions in the county in which the renewable
19 energy ~~[preject]~~ facility is to be situated or, if the
20 land is in a conservation state land use district, the
21 department of land and natural resources, shall
22 approve the exemption from subdivision requirements



1 within ninety days after the [~~project's~~] facility's
2 developer and the owner of the land on which the
3 renewable energy [~~project~~] facility is to be situated
4 have submitted the conceptual schematics or
5 preliminary plans and specifications for the renewable
6 energy [~~project~~] facility to the county agency or the
7 department of land and natural resources, and have
8 provided to [~~such~~] the county agency or the department
9 of land and natural resources, as applicable, a
10 certification and agreement that all applicable and
11 appropriate environmental reviews and permitting shall
12 be completed prior to commencement of development of
13 the renewable energy [~~project-~~] facility. If, on the
14 ninety-first day, an exemption has not been approved,
15 it shall be deemed disapproved by the county agency or
16 the department of land and natural resources,
17 whichever is applicable.

- 18 (e) Nothing in this section shall:
 - 19 (1) Exempt the actual development, construction, or
 - 20 operation of any use, project, facility, or
 - 21 improvement from any applicable state or county laws,
 - 22 ordinances, restrictions, permits, or approvals,

1 including restrictions on allowable uses or conditions
2 and requirements for adequate infrastructure or
3 mitigation measures;

4 (2) Exempt renewable energy [~~projects~~] facilities from any
5 permit or approval process under chapter 183C, 205,
6 205A, or 343;

7 (3) Exempt from subdivision requirements the conveyance of
8 any fee interest in land; or

9 (4) Prevent any agency or authority that issues permits or
10 approvals for renewable energy [~~projects~~] facilities
11 from imposing reasonable and appropriate restrictions
12 on the type of siting, development, construction, and
13 operation of a renewable energy [~~project~~] facility to
14 protect agricultural resources and activities, the
15 environment, natural resources, cultural resources and
16 activities, or the health, safety, and welfare of the
17 State.

18 (f) All agencies and authorities that issue permits or
19 approvals for renewable energy [~~projects~~] facilities may adopt
20 rules or procedures to:



- 1 (1) Determine the type of renewable energy [~~project~~]
- 2 facility that may be allowed within an agricultural or
- 3 conservation district;
- 4 (2) Determine criteria for the appropriate siting of the
- 5 renewable energy [~~project~~] facility within an urban,
- 6 rural, agricultural, or conservation district; and
- 7 (3) Identify mitigation measures applicable to renewable
- 8 energy [~~projects~~] facilities to protect agricultural
- 9 resources and activities, the environment, natural
- 10 resources, cultural resources and activities, health,
- 11 safety, and welfare of the State.

12 (g) This section is not intended to diminish the
13 discretion of any agency or any authority to approve or
14 disapprove any permit application."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval,
18 and shall be repealed on the same date as section 2 of Act 173,
19 Session Laws of Hawaii 2009.

20



Report Title:

Renewable Energy Facilities; Subdivision Requirement; Exemptions

Description:

Clarifies that the exemption from subdivision requirements for leases, easements, and other possessory interests for renewable energy facilities applies to renewable energy facilities on urban, rural, or agricultural land approved by the land use commission and county planning commissions, and renewable energy facilities on conservation land permitted by the board of land and natural resources. (SD1)

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