

JAN 22 2010

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1 SECTION 1. Hawaii's over-dependency on imported fossil
2 fuels threatens the health, safety, and welfare of the people of
3 Hawaii and our economic and environmental security and future.
4 Hawaii's dependency on imported fossil fuels is the highest in
5 the nation, accounting for approximately ninety per cent of the
6 State's energy needs, while Hawaii's residents and businesses
7 are burdened with the highest fuel costs in the nation. This
8 over-dependency on imported fossil fuels leaves Hawaii residents
9 extremely vulnerable to events and factors that are not within
10 the control of this State or our residents, such as oil
11 embargos, supply disruption, international market dysfunction,
12 and resulting cost increases. The impacts of constant increases
13 in the cost of oil in recent history have underscored Hawaii's
14 fossil fuel dependency and vulnerability and the related loss of
15 control over the future of Hawaii's energy consumption and costs
16 which pose immediate and long-term threats to the health,
17 safety, and welfare of Hawaii's residents.



1 Recognizing the vital importance of increasing Hawaii's energy
2 self-sufficiency, the legislature has begun to take measures to
3 address the issue, including:

4 (1) Over the past four years, the legislature and the
5 department of business, economic development, and
6 tourism have committed to achieving dependable,
7 efficient, and economical statewide energy systems,
8 increased self-sufficiency, greater energy security,
9 and reduction of greenhouse gas emissions;

10 (2) Act 272, Session Laws of Hawaii 2001, recognized the
11 economic, environmental and fuel diversity benefits of
12 renewable energy resources and the need to encourage
13 the establishment of a market for renewable energy in
14 Hawaii using the State's renewable energy resources;

15 (3) Act 240, Session Laws of Hawaii 2006, provided a
16 framework for energy self-sufficiency; and

17 (4) The State has mandated that twenty-five per cent of
18 electricity sold by each electric utility in Hawaii
19 must be generated from renewable resources by the end
20 of 2020 and has sought to encourage private sector
21 development of renewable energy projects.



1 In light of the recognition of the critical need to
2 immediately develop renewable energy projects to develop and
3 utilize Hawaii's bountiful indigenous sources of renewable
4 energy and reduce our over-dependency on imported fossil fuels,
5 it is the legislature's obligation to the people of Hawaii to
6 address duplicative and time consuming processes in order to
7 encourage expeditious development of feasible renewable energy
8 projects.

9 The legislature recognizes that private sector development
10 of large scale projects must be encouraged and is necessary to
11 meet the state mandate and goals for renewable energy. These
12 renewable energy projects are often complex, large-scale
13 undertakings requiring substantial investment and a substantial
14 number of permits. The process for obtaining the necessary
15 permits for renewable energy projects and developments and the
16 process for meeting state, county, and federal rules and
17 regulations has for decades been described as overly time-
18 consuming, cumbersome, onerous, and costly. The "Hawaii
19 Integrated Energy Policy Report" of 1991 found that the permit
20 and approval process required for the development and siting of
21 energy facilities for a single project can take up to seven
22 years to complete. Thus, the inefficiency of the permitting and



1 development process acts as a substantial barrier and impediment
2 to meeting Hawaii's vital renewable energy needs and mandates by
3 creating significant delays and adding costs, deterring
4 investment and impacting the feasibility of the development and
5 implementation of renewable energy projects.

6 Therefore, the legislature finds that there is a compelling
7 state interest in encouraging and stimulating the immediate
8 development of renewable energy projects to utilize Hawaii's
9 indigenous renewable energy resources for the health, safety,
10 and welfare of the residents of Hawaii, and that to achieve this
11 compelling state interest, it is necessary to establish an
12 expedited and streamlined permitting process that creates a
13 regulatory framework that is predictable, and in turn,
14 encourages private investment in renewable energy projects and
15 makes feasible the expeditious development of renewable energy
16 projects in Hawaii by private companies.

17 The purpose of this Act is to:

- 18 (1) Establish an expedited renewable energy facility
19 siting process for state and county permits necessary
20 for the siting, development, construction, and
21 operation of a renewable energy facility;



- 1 (2) Direct the state energy resources coordinator to
2 implement and further the state policies and
3 compelling state interest in developing indigenous
4 renewable energy resources and decreasing Hawaii's
5 dependency on imported fossil fuels in furtherance of
6 energy self-sufficiency, energy security, and
7 reduction of greenhouse gas emissions through
8 coordination, concurrent approval processes,
9 elimination of redundancy in the permitting process,
10 clear and fair deadlines, and other efficiencies in
11 processes and procedures established pursuant to the
12 authority given to the state energy resources
13 coordinator in this Act; and
- 14 (3) Give to the state energy resources coordinator the
15 necessary power and authority to implement and further
16 state renewable energy policies and compelling
17 interest in expediting the development of renewable
18 energy facilities, while ensuring, and not
19 circumventing, opportunity for public review and
20 comment, preserving the environment and mitigating
21 potential environmental and other impacts from
22 renewable energy projects, and protecting the public's



1 health, safety, and welfare consistent with the goals,
2 purposes, and policies of this Act.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 RENEWABLE ENERGY FACILITY SITING PROCESS

8 § -1 Definitions. For the purpose of this chapter:

9 "Applicant" means any person or entity who submits an
10 application to the energy resources coordinator for a permit or
11 approval for a renewable energy facility.

12 "County agency" means a department, division, office,
13 officer, agency, or other organization of a county government,
14 including a county council.

15 "County law" means a county charter provision, ordinance,
16 or administrative rule.

17 "County permit" means a permit that is subject to approval
18 by a county agency pursuant to federal, state, or county law.

19 "Delegated environmental permit" means an air or water
20 quality permit subject to issuance by the department of health
21 under authority delegated by the United States Environmental
22 Protection Agency.



1 "Energy resources coordinator" or "coordinator" means the
2 energy resources coordinator as designated in section 196-3.

3 "Permit":

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

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

10 (B) Issuance by a county agency of a building or
11 grading permit; or

12 (C) Approval by the public utilities commission of a
13 power purchase agreement between a renewable
14 energy facility owner and a public utility; and

15 (2) Includes:

16 (A) A state land use reclassification;

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

19 (C) A county zoning map amendment;

20 (D) A state conservation district use permit;

21 (E) A state special permit for an agricultural or
22 rural district;



- 1 (F) A special management area permit;
- 2 (G) A shoreline setback variance;
- 3 (H) A grant of an easement on state or county real
- 4 property; and
- 5 (I) Any other state or county permit or approval
- 6 applicable and necessary for the siting,
- 7 development, construction, or operation of a
- 8 renewable energy facility, except as set forth in
- 9 paragraph (1) above.

10 "Power purchase agreement" means an agreement between a
11 renewable energy facility owner and a public utility on the sale
12 of electricity produced by the facility to the public utility.

13 "Renewable energy" has the same meaning as that term is
14 defined under section 269-91.

15 "Renewable energy facility" or "facility" means a facility
16 located in the State that is planned to have the capacity to
17 produce from renewable energy at least two hundred megawatts of
18 electricity. The term includes any of the following associated
19 with the facility:

- 20 (1) The land parcel on which the facility is situated;
- 21 (2) Any renewable energy production structure or
- 22 equipment;



- 1 (3) Any energy transmission line from the facility to a
- 2 public utility's electricity distribution system;
- 3 (4) Any on-site infrastructure; and
- 4 (5) Any on-site building, structure, other improvement, or
- 5 equipment necessary for the production of electricity
- 6 or biofuel from the renewable energy site,
- 7 transmission of the electricity or biofuel, or any
- 8 accommodation for employees of the facility.

9 "State agency" means a department, division, office,
10 officer, agency, or other organization of the state government,
11 but not the legislature.

12 "State law" means a state constitutional provision,
13 statute, or administrative rule.

14 "State permit" means a permit that is subject to the
15 approval of a state agency pursuant to federal or state law;
16 except that the term does not include a delegated environmental
17 permit.

18 **§ -2 Staff and contractor; energy resources coordinator;**
19 **renewable energy facility siting process.** (a) The energy
20 resources coordinator may employ and dismiss staff without
21 regard to chapters 76 and 89 to assist the coordinator in the
22 implementation of this chapter. The salary of each staff member



1 shall be set by the coordinator. Each staff member shall be
2 entitled to participate in any public employee benefit program
3 plan or privilege.

4 The coordinator may also contract persons to assist the
5 coordinator in the implementation of this chapter. The
6 coordinator's power to charge an applicant for reimbursement of
7 staff costs and expenses shall be subject to the guidelines and
8 limitations set forth in section -4.

9 § -3 **General duties of the coordinator.** The coordinator
10 shall:

11 (1) Implement and further state policies and the
12 compelling state interest in developing indigenous
13 renewable energy resources and decreasing Hawaii's
14 dependency on imported fossil fuels in furtherance of
15 energy self-sufficiency, energy security, and
16 reduction of greenhouse gas emissions through
17 coordination, concurrent approval processes,
18 elimination of redundancy in the permitting process,
19 clear and fair deadlines, and other efficiencies in
20 processes and procedures established pursuant to the
21 authority given to the coordinator in this chapter.

22 The coordinator shall have the power and authority,



1 which shall be liberally construed, necessary to
2 implement and further the state renewable energy
3 policies, mandate, and compelling interest in
4 expediting the development of renewable energy
5 facilities, while ensuring, and not circumventing,
6 opportunity for public review and comment, mitigating
7 potential environmental and other impacts from
8 renewable energy projects, and protecting the public's
9 health, safety, and welfare. In furtherance of this
10 intent, the coordinator shall have the power and
11 authority, as provided under this chapter, to receive,
12 accept, review, coordinate, and approve all
13 applications for permits necessary for the development
14 of a renewable energy facility on an expedited basis.
15 The coordinator shall coordinate and process permits
16 concurrently and shall take not longer than six months
17 following receipt of a completed consolidated
18 application to complete the review and approval of the
19 application and all permits relating thereto, subject
20 only to final acceptance of an environmental
21 assessment or environmental impact statement, or both,
22 as may be required under chapter 343;



1 (2) Receive and accept a consolidated application, in a
2 form as the coordinator shall prescribe as required
3 under section -15, for the approval of the siting,
4 development, construction, and operation of a
5 renewable energy facility. Within ten days following
6 receipt of an application or an amendment or
7 supplement thereto, the coordinator shall give written
8 notice to the applicant as to the coordinator's
9 acceptance of the application, amendment, or
10 supplement, or as to any deficiencies relating
11 thereto;

12 (3) Identify all state and county permits applicable and
13 necessary for approval of the renewable energy
14 facility;

15 (4) Gather from the applicant any information the
16 coordinator finds relevant and necessary to review,
17 process, and make a decision on the permit
18 application; and

19 (5) Work with other federal, state, and county agencies
20 and the applicant to determine the terms and
21 conditions of the permits that are necessary to
22 effectuate this chapter while still protecting the



1 public health, safety, and welfare to the extent
2 practicable without unduly delaying, impairing, or
3 frustrating the purposes, policies, and goals of this
4 chapter.

5 § -4 Consolidated application; fee; pre-application
6 conference; public notice of receipt of application. (a) The
7 coordinator shall establish a consolidated application in
8 accordance with section -15 and require the applicant to pay
9 a fee with the consolidated application. The coordinator shall
10 establish the staffing for the consolidated application and set
11 the fee at an amount mutually agreed upon by the applicant and
12 the coordinator, but sufficient to cover not more than the
13 reasonable, actual, and direct costs and expenses of the
14 coordinator, coordinator's staff, and contractor, and relevant
15 state and county agencies to provide input and advice on the
16 state and county permits applicable and necessary for and
17 directly related to the applicant's facility. Upon receipt of
18 the fee or periodically thereafter, the coordinator shall
19 transmit to each relevant state or county agency the portion of
20 the fee that reflects the cost to that state or county agency
21 for providing its input, review, and advice.



1 (b) Subject to the ten-day deadline set forth in
2 section -3(2), before accepting a consolidated application,
3 the coordinator may hold a pre-application conference with the
4 prospective applicant to discuss all the state and county
5 permits necessary for the facility and notify the prospective
6 applicant of the information that must be submitted with the
7 consolidated application.

8 (c) Within ten days of receipt of a consolidated
9 application, the coordinator shall publish a public notice of
10 receipt of the application in a statewide publication. The
11 public notice shall include:

- 12 (1) The name of the applicant;
- 13 (2) The location of the proposed renewable energy
14 facility;
- 15 (3) A summarized description of the facility;
- 16 (4) The state and county permits required for the
17 facility; and
- 18 (5) Any other information deemed necessary or appropriate
19 by the coordinator and relevant to the proposed
20 facility.

21 § -5 Approval of state permits. (a) When the
22 coordinator receives an application for a renewable energy



1 facility that requires state permits, then concurrently with the
2 determinations and processes of the coordinator under
3 section -6(a) and the other sections of this chapter and
4 within the sixty days following receipt of a completed
5 consolidated application, the coordinator, after consultation
6 with relevant federal, state, and county agencies, shall
7 determine the terms and conditions to be imposed on the state
8 permits that are necessary to protect the public health, safety,
9 and welfare to the extent practicable without unduly delaying,
10 impairing, or frustrating the purposes, policies, and goals of
11 this chapter. The terms and conditions may require the
12 applicant to improve off-site infrastructure or establish
13 measures to mitigate significant adverse environmental effects,
14 but only to the extent directly caused by the applicant's
15 renewable energy facility.

16 The coordinator shall make the determination for all terms
17 and conditions of all required state permits no later than sixty
18 days after receipt of a completed consolidated application;
19 provided that, if an approval for a federal permit or delegated
20 environmental permit or acceptance of an environmental
21 assessment or environmental impact statement is a prerequisite
22 to the approval of a state permit required for the facility,



1 then the coordinator's determination shall be made, but its
2 effectiveness shall be conditioned upon approval of the federal
3 permit or delegated environmental permit, or acceptance of the
4 environmental assessment or environmental impact statement, or
5 both, as applicable.

6 (b) Immediately upon determining the necessary terms and
7 conditions under subsection (a), the coordinator, on behalf of
8 the relevant state agencies, shall approve the state permits
9 with those terms and conditions. The approval shall take effect
10 on the sixty-first day after the coordinator's acceptance of a
11 completed consolidated application; provided, however, that, if
12 an approval for a federal permit or delegated environmental
13 permit, or acceptance of an environmental assessment or
14 environmental impact statement is a prerequisite to the approval
15 of a state permit required for the facility, then the approval
16 shall be conditioned upon and made effective one business day
17 following the approval of the federal permit or delegated
18 environmental permit, or acceptance of the environmental
19 assessment or environmental impact statement, as applicable. If
20 a judicial proceeding has been timely initiated under section
21 343-7(c) regarding the acceptance of the statement, then the
22 state permits shall be subject to the order entered with the



1 final judicial decision on the dispute. The coordinator may
2 publish the coordinator's approval of all state permits in one
3 consolidated document.

4 If a statement of findings is required by state law as a
5 condition for approval of a state permit, then the coordinator
6 shall issue the statement to accompany the permit. For the
7 purpose of this chapter, a statement of findings shall be deemed
8 a condition of the state permit.

9 (c) Notwithstanding the approval of a state permit by the
10 coordinator, the state agency on whose behalf the permit was
11 approved shall be responsible for monitoring and enforcing the
12 terms and conditions of the permit.

13 **§ -6 Recommendation for approval of county permits;**
14 **approval of county permits.** (a) Within fifteen days following
15 the coordinator's receipt of a completed application for a
16 renewable energy facility that requires county permits, and
17 concurrently with the determination of the coordinator under
18 section -5(a) and the other sections of this chapter, the
19 coordinator, after consultation with relevant federal, state,
20 and county agencies, shall determine the terms and conditions to
21 be imposed on the county permits that are necessary to protect
22 the public health, safety, and welfare to the extent practicable



1 without unduly delaying, impairing, or frustrating the purposes,
2 policies, and goals of this chapter. The terms and conditions
3 may require the applicant to improve off-site infrastructure or
4 establish measures to mitigate significant adverse environmental
5 effects, but only to the extent directly caused by the
6 applicant's renewable energy facility.

7 The coordinator shall make the determination for all county
8 permits at the same time the determination is made for state
9 permits under section -5(a).

10 (b) Immediately upon determining the necessary terms and
11 conditions under subsection (a), the coordinator shall recommend
12 to the relevant county agencies that they approve the county
13 permits with those terms and conditions.

14 If a statement of findings is required by county law as a
15 condition for approval of a particular county permit, the
16 coordinator shall issue the statement to accompany the permit.
17 For the purpose of this chapter, a statement of findings shall
18 be deemed a condition of the county permit.

19 (c) Within forty-five days of receipt of the
20 recommendation from the coordinator, each relevant county agency
21 may approve the county permit under its jurisdiction with the
22 terms and conditions recommended by the coordinator or amended



1 by the county agency. The county agency may charge the
2 applicant a reasonable fee for reviewing and acting on the
3 permit, consistent with established county agency fees.

4 (d) If, within forty-five days of receipt of a
5 recommendation from the coordinator, a county agency does not
6 approve the county permit, either because of rejection or
7 inaction, then the permit with the terms and conditions
8 recommended by the coordinator shall be deemed approved on the
9 forty-sixth day without necessity of further action by the
10 county agency or coordinator.

11 (e) If, within the forty-five-day period following receipt
12 of a recommendation from the coordinator, the county agency
13 approves the county permit, but with amendments to any of the
14 terms and conditions recommended by the coordinator, then the
15 county agency shall notify the coordinator within three days of
16 the approval. If the notification is not provided to the
17 coordinator within the three-day period, then the county agency
18 shall be deemed to have not approved the permit within the
19 forty-five-day period, and the permit shall be deemed approved
20 with the coordinator's recommended terms and conditions in
21 accordance with subsection (d).



1 The coordinator shall have ten days after receipt of the
2 notification from the county agency to determine whether to
3 accept or reject the amended terms and conditions of the county
4 permit. If the coordinator accepts all amended terms and
5 conditions, then the coordinator shall approve the county permit
6 with the amended terms and conditions within the ten-day
7 period. If the coordinator rejects all or some of the amended
8 terms and conditions, then the coordinator shall approve the
9 county permit with terms and conditions that exclude the
10 rejected amendments within the ten-day period. The coordinator
11 shall issue the decision in writing within the ten-day period.
12 If the coordinator does not issue a written decision within the
13 ten-day period, then the coordinator shall be deemed to have
14 rejected the county's amendments and the permit shall be deemed
15 approved with the coordinator's recommended terms and conditions
16 in accordance with subsection (d) on the eleventh day without
17 necessity of further action by the county agency or coordinator.

18 (f) Notwithstanding the action by the coordinator on a
19 county permit approved pursuant to this subsection, the relevant
20 county agency shall be responsible for monitoring and enforcing
21 the terms and conditions of the permit.



1 § -7 Coordination with federal permits, delegated
2 environmental permits, and environmental impact review process.

3 (a) Concurrently with the sixty-day period set forth in
4 section -5(a), the coordinator shall establish and implement
5 a system to coordinate the approval of required federal permits
6 with state and county permits for a renewable energy facility.
7 The system shall include a process for coordinating the federal
8 environmental impact statement process with the state
9 environmental impact statement process, such that they run
10 concurrently with each other and with the state and county
11 permitting processes.

12 (b) The coordinator also shall establish and implement a
13 system to coordinate and concurrently process the issuance of
14 delegated environmental permits by the department of health with
15 approval of state and county permits for a renewable energy
16 facility.

17 (c) The coordinator may convene interagency working groups
18 for the purpose of this section.

19 § -8 Public hearing by coordinator. (a) If a federal,
20 state, or county law requires a state or county agency to hold a
21 public hearing on a permit application before making a decision
22 on the permit, then the coordinator shall hold the public



1 hearing in place of the state or county agency within the sixty-
2 day period set forth in section -5(a). To the extent
3 practicable, the coordinator shall consolidate public hearings
4 to cover all permit applications and required public hearings.

5 (b) Nothing in this section shall prevent a county agency
6 from voluntarily holding a public hearing on a county permit
7 after the coordinator submits to the county agency a
8 recommendation on that permit pursuant to section -6. If a
9 county agency voluntarily holds a public hearing on a county
10 permit, it shall do so within the forty-five-day period provided
11 in section -6(c) for review and action on the permit.

12 § -9 Land use, zoning, building, and construction status
13 of renewable energy facility; state and county permits. (a) A
14 renewable energy facility, and all necessary state and county
15 permits for which have been approved under this chapter, shall
16 be deemed a permitted principal use on the land parcel upon
17 which it is situated. The land use commission, department of
18 land and natural resources, and the applicable county shall
19 revise any state land use district map and county zoning map
20 appropriately to reflect this status.

21 (b) The final plans and specifications of the renewable
22 energy facility, as set forth in the relevant state and county



1 permits approved pursuant to this chapter, shall be deemed to
2 constitute the zoning, building, and construction standards for
3 the facility and the land parcel upon which it is situated.

4 For the purpose of applicable state and county law:

5 (1) The facility shall be deemed a conforming use; and

6 (2) Any building or structure associated with or related
7 to a facility shall be deemed a conforming building or
8 structure that can be dedicated to the appropriate
9 state or county agency.

10 (c) Nothing in this section shall be deemed to prohibit
11 the amendment of the state land use classification, county
12 zoning map, or other zoning, building, or construction standard
13 with respect to facilities approved under this chapter. Any
14 amendment, if made, shall be accomplished in accordance with
15 applicable state or county law; except that no amendment shall
16 remove the conforming status conferred under subsection (b) with
17 respect to any facility or any associated building or structure.

18 § -10 Environmental impact review process;

19 applicability. (a) Chapter 343 shall apply to any renewable
20 energy facility, a consolidated application for which shall be
21 submitted to the coordinator under this chapter.



1 (b) Nothing in this chapter or chapter 343 shall prohibit
2 the review and processing by the coordinator of applications for
3 permits for a renewable energy facility concurrently with the
4 preparation and processing by the applicant of an environmental
5 impact statement for the facility. To accomplish the concurrent
6 review, the coordinator shall, at the applicant's request,
7 consent to the receipt and review of portions of a draft of an
8 environmental impact statement before its completion.

9 § -11 Power purchase agreement not a state permit under
10 this chapter; coordination of efforts. A power purchase
11 agreement between a renewable energy facility owner and a public
12 utility shall not be a permit subject to approval by the
13 coordinator. Any power purchase agreement shall be subject to
14 the applicable provisions of chapter 269. However, the
15 coordinator shall establish and implement a system to coordinate
16 and concurrently process the review and approval by the public
17 utilities commission of any power purchase agreement for
18 electricity generated by a renewable energy facility. The
19 coordinator may convene an interagency working group for the
20 purpose of this section.

21 § -12 Building or grading permit required from county.
22 A grading or building permit issued by the applicable county



1 shall be required to grade a site or construct a structure for a
2 renewable energy facility. The applicable county shall
3 establish an expedited process for review and issuance of all
4 required building or grading permits that shall not exceed
5 ninety days; provided the applicant agrees to pay for a third
6 party reviewer to review the grading or building permit
7 application as provided in this section. Under the process, the
8 county may contract with a third party to conduct the review of
9 the permit application and require the applicant for the permit
10 to pay the cost incurred for the third party review.

11 § -13 Judicial review of dispute regarding approved
12 permit; inapplicability of contested case procedures. (a) Any
13 person aggrieved by the approval of a state or county permit or
14 term or condition of any approved permit may file an action for
15 relief in the circuit court. Notwithstanding any other
16 provision of this chapter to the contrary, for the purposes of
17 bringing judicial action under this subsection, the term "person
18 aggrieved" shall include the applicant and any state or county
19 agency, office, council, or other government entity that has
20 decision making authority related to the approved permit. Other
21 parties, pursuant to court action, may be adjudged aggrieved.



1 (b) The inapplicability of the use of contested case
2 procedures pursuant to chapter 91 in the approval of any state
3 or county permit pursuant to this chapter shall not be grounds
4 for any judicial appeal.

5 § -14 Inapplicability of maximum time period rule
6 requirement. Section 91-13.5 shall not apply to the
7 coordinator. The deadlines for review and action upon a
8 consolidated application for a renewable energy facility shall
9 be subject to this chapter.

10 § -15 Rules. (a) Within thirty days from the effective
11 date of this chapter, the coordinator shall, after consultation
12 with prospective applicants and related governmental agencies as
13 the coordinator deems necessary or advisable:

- 14 (1) Adopt a consolidated application form which is
- 15 consistent with the streamlining and concurrent agency
- 16 approval processing goals of this chapter; and
- 17 (2) Adopt interim rules to implement this chapter without
- 18 regard to the notice and public hearing requirements
- 19 of section 91-3 or the small business impact review
- 20 requirements of chapter 201M.

21 (b) Any amendment of the interim rules shall be subject to
22 all provisions of chapters 91 and 201M.



1 § -16 Superiority of chapter over conflicting state or
2 county law. The provisions of this chapter shall supersede any
3 conflicting state or county law."

4 SECTION 3. Section 91-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§91-1 Definitions. For the purpose of this chapter:

7 [~~1~~] "Agency" means each state or county board, commission,
8 department, or officer authorized by law to make rules
9 or to adjudicate contested cases, except those in the
10 legislative or judicial branches.

11 [~~2~~] "Persons" includes individuals, partnerships,
12 corporations, associations, or public or private
13 organizations of any character other than agencies.

14 [~~3~~] "Party" means each person or agency named or admitted
15 as a party, or properly seeking and entitled as of
16 right to be admitted as a party, in any court or
17 agency proceeding.

18 [~~4~~] "Rule" means each agency statement of general or
19 particular applicability and future effect that
20 implements, interprets, or prescribes law or policy,
21 or describes the organization, procedure, or practice
22 requirements of any agency. The term does not include



1 regulations concerning only the internal management of
2 an agency and not affecting private rights of or
3 procedures available to the public, nor does the term
4 include declaratory rulings issued pursuant to section
5 91-8, nor intra-agency memoranda.

6 ~~[-(5)]~~ "Contested case" means a proceeding in which the legal
7 rights, duties, or privileges of specific parties are
8 required by law to be determined after an opportunity
9 for agency hearing. The term does not apply to the
10 review, processing, or approval of state or county
11 permits for any renewable energy facility under
12 chapter _____.

13 ~~[-(6)]~~ "Agency hearing" refers only to ~~[such]~~ a hearing held
14 by an agency immediately prior to a judicial review of
15 a contested case as provided in section 91-14."

16 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:

18 "(c) The rate payable by the public utility to the
19 producer for the nonfossil fuel generated electricity supplied
20 to the public utility shall be as agreed between the public
21 utility and the supplier and as approved by the public utilities
22 commission; provided that in the event the public utility and



1 the supplier fail to reach an agreement for a rate, the rate
2 shall be as prescribed by the public utilities commission
3 according to the powers and procedures provided in this chapter.

4 The commission's determination of the just and reasonable
5 rate shall be accomplished by establishing a methodology that
6 removes or significantly reduces any linkage between the price
7 of fossil fuels and the rate for the nonfossil fuel generated
8 electricity to potentially enable utility customers to share in
9 the benefits of fuel cost savings resulting from the use of
10 nonfossil fuel generated electricity. As the commission deems
11 appropriate, the just and reasonable rate for nonfossil fuel
12 generated electricity supplied to the public utility by the
13 producer may include mechanisms for reasonable and appropriate
14 incremental adjustments, such as adjustments linked to consumer
15 price indices for inflation or other acceptable adjustment
16 mechanisms.

17 When an application is submitted to the commission for the
18 approval of a power purchase agreement or rate agreement for
19 nonfossil fuel generated electricity between a renewable energy
20 facility owner and a public utility under chapter _____, the
21 commission shall approve, approve with modification, or reject
22 the application within sixty days of receipt. The commission's



1 approval or approval with modification shall not be unreasonably
2 withheld or delayed. If the commission does not approve,
3 approve with modification, or reject the proposed power purchase
4 agreement or rate agreement within the sixty-day period, then
5 the power purchase agreement and rate agreement as submitted
6 shall be deemed approved on the first day following the sixty-
7 day period.

8 When a renewable energy facility owner and a public utility
9 fail to reach an agreement on a power purchase agreement or rate
10 payable for nonfossil fuel generated electricity, either party
11 may request the commission to prescribe a just and reasonable
12 rate or other agreement terms. The commission shall prescribe
13 the rate or terms, or both, within sixty days of receipt of the
14 request. If the commission does not prescribe the rate or
15 terms, or both, within the sixty-day period, then the rate or
16 terms last proposed by the renewable energy facility owner shall
17 be deemed the rate or terms prescribed. That rate or those
18 terms, as applicable, shall be effective on the first day after
19 the first day following the sixty-day period.

20 For the purpose of this section:

21 (1) The sixty-day period for commission determinations
22 shall be subject to extension by the commission for



1 reasonable cause and for a reasonable time as
 2 necessary, but in no event later than the six-month
 3 deadline for processing of permits by the energy
 4 resources coordinator referred to in section -3;
 5 and

6 (2) "Renewable energy facility owner" means the owner or
 7 authorized agent of the owner of a renewable energy
 8 facility as defined in section -1."

9 SECTION 5. Section 343-2, Hawaii Revised Statutes, is
 10 amended by amending the definition of "renewable energy
 11 facility" to read as follows:

12 ""Renewable energy facility" has the same meaning as
 13 defined in section [~~201N-1.~~] -1."

14 SECTION 6. Section 343-5, Hawaii Revised Statutes, is
 15 amended by amending subsection (c) to read as follows:

16 "(c) Whenever an applicant proposes an action specified by
 17 subsection (a) that requires approval of an agency and that is
 18 not a specific type of action declared exempt under section
 19 343-6, the agency initially receiving and agreeing to process
 20 the request for approval shall prepare an environmental
 21 assessment of the proposed action at the earliest practicable
 22 time to determine whether an environmental impact statement



1 shall be required; provided that, for an action that proposes
2 the establishment of a renewable energy facility, at the
3 renewable energy facility applicant's written request, a draft
4 environmental impact statement shall be prepared at the earliest
5 practicable time[-] without the need to first prepare an
6 environmental assessment. The final approving agency for the
7 request for approval is not required to be the accepting
8 authority.

9 For environmental assessments for which a finding of no
10 significant impact is anticipated:

- 11 (1) A draft environmental assessment shall be made
12 available for public review and comment for a period
13 of thirty days;
- 14 (2) The office shall inform the public of the availability
15 of the draft environmental assessment for public
16 review and comment pursuant to section 343-3; and
- 17 (3) The applicant shall respond in writing to comments
18 received during the review, and the agency shall
19 prepare a final environmental assessment to determine
20 whether an environmental impact statement shall be
21 required. A statement shall be required if the agency
22 finds that the proposed action may have a significant



1 effect on the environment. The agency shall file
2 notice of the agency's determination with the office,
3 which, in turn, shall publish the agency's
4 determination for the public's information pursuant to
5 section 343-3.

6 The draft and final statements, if required, shall be
7 prepared by the applicant, who shall file these statements with
8 the office.

9 The draft statement shall be made available for public
10 review and comment through the office for a period of forty-five
11 days. The office shall inform the public of the availability of
12 the draft statement for public review and comment pursuant to
13 section 343-3.

14 The applicant shall respond in writing to comments received
15 during the review and prepare a final statement. The office,
16 when requested by the applicant or agency, may make a
17 recommendation as to the acceptability of the final statement.

18 The authority to accept a final statement shall rest with
19 the agency initially receiving and agreeing to process the
20 request for approval. The final decision-making body or
21 approving agency for the request for approval is not required to
22 be the accepting authority. The planning department for the



1 county in which the proposed action will occur shall be a
2 permissible accepting authority for the final statement. For a
3 renewable energy facility, the energy resources coordinator
4 under chapter shall be the accepting authority.

5 Acceptance of a required final statement shall be a
6 condition precedent to approval of the request and commencement
7 of the proposed action. Upon acceptance or nonacceptance of the
8 final statement, the agency shall file notice of such
9 determination with the office. The office, in turn, shall
10 publish the determination of acceptance or nonacceptance of the
11 final statement pursuant to section 343-3.

12 The agency receiving the request, within thirty days of
13 receipt of the final statement, shall notify the applicant and
14 the office of the acceptance or nonacceptance of the final
15 statement. The final statement shall be deemed to be accepted
16 if the agency fails to accept or not accept the final statement
17 within thirty days after receipt of the final statement;
18 provided that the thirty-day period may be extended at the
19 request of the applicant for a period not to exceed fifteen
20 days.

21 In any acceptance or nonacceptance, the agency shall
22 provide the applicant with the specific findings and reasons for



1 its determination. An applicant, within sixty days after
2 nonacceptance of a final statement by an agency, may appeal the
3 nonacceptance to the environmental council, which, within thirty
4 days of receipt of the appeal, shall notify the applicant of the
5 council's determination. In any affirmation or reversal of an
6 appealed nonacceptance, the council shall provide the applicant
7 and agency with specific findings and reasons for its
8 determination. The agency shall abide by the council's
9 decision."

10 SECTION 7. Chapter 196D, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 8. If a prospective developer of a renewable
13 energy facility has submitted an application for a state or
14 county permit necessary for the siting, development,
15 construction, or operation of the facility before July 1, 2008,
16 the prospective developer may:

17 (1) Request the relevant state or county agency to proceed
18 with reviewing, processing, and acting upon the permit
19 application; or

20 (2) Withdraw the permit application and submit a
21 consolidated application to the energy resources
22 coordinator pursuant to chapter , Hawaii Revised



1 Statutes, established under section 2 of this Act;
2 provided that if the prospective developer chooses to
3 submit a consolidated application, the relevant state
4 or county agency shall transmit to the coordinator all
5 documents applicable to the withdrawn permit
6 application, except those that the agency finds are
7 internal work product that may expose the agency to
8 liability if released.

9 If the prospective developer has submitted two or more
10 permit applications with state or county agencies before July 1,
11 2008, then the prospective developer may select the action under
12 paragraph (1) for some applications and the action under
13 paragraph (2) for other applications.

14 A draft or final environmental impact statement under
15 preparation by a prospective developer for a state or county
16 permit application submitted before July 1, 2008 may be used for
17 a consolidated application submitted to the coordinator. The
18 prospective developer shall not be required to begin the
19 environmental impact statement process anew if withdrawing the
20 permit application and submitting a consolidated application.

21 SECTION 9. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2010-2011 for
2 the establishment and operation of the renewable energy facility
3 siting process established under this Act.

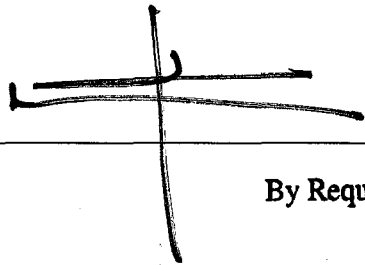
4 The sum appropriated shall be expended by the department of
5 business, economic development, and tourism for the purposes of
6 this Act.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect upon its approval;
10 provided that section 9 shall take effect on July 1, 2010.

11

INTRODUCED BY:



By Request



Report Title:

Renewable Energy; Renewable Energy Facility Siting Process;
Appropriation

Description:

Establishes a renewable energy facility siting process to expedite the review and action upon state and county permits necessary for the siting, development, construction, and operation of a renewable energy facility.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

