

**HB 245 HD1**



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

**LINDA LINGLE**  
GOVERNOR  
**THEODORE E. LIU**  
DIRECTOR  
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DEPUTY DIRECTOR

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Statement of  
**THEODORE E. LIU**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**  
Tuesday, March 17, 2009  
3:00 PM  
State Capitol, Conference Room 225

in consideration of

**HB 245, HD1**  
**RELATING TO RENEWABLE ENERGY FACILITIES.**

Chair Gabbard, Vice Chair English, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of HB 245 HD1, but defers to the permitting agencies with respect to implementation. HB 245 HD1 allows for the siting, development, construction, and operation of a renewable energy facility within a conservation or agricultural district or special management area, while at the same time maintaining the discretion of permitting agencies.

While conservation and agricultural districts and special management areas contain many valuable resources for the State that need special protection, the benefits of energy self-sufficiency and the reduction of our reliance on petroleum-based energy warrants efforts to allow renewable energy within those districts and areas, when appropriate.

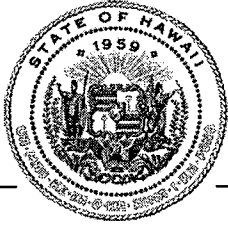
We are concerned that, as written, the requirement for agencies to adopt additional rules could unnecessarily burden the agencies and may not be necessary if such approvals are already

within the agencies' discretion. Therefore, we recommend that on page 3, line 6, the word "shall" be replaced with the word "may."

We are also concerned that the limits imposed on page 4, line 8 could interfere with the ability to appropriately site other types of renewable energy facilities, such as ocean thermal energy conversion (OTEC) or wave energy facilities, in areas that are not agriculturally zoned. It is our understanding that this section was intended to address concerns about agricultural lands; however, as written, it applies to conservation and special management areas as well. OTEC and wave energy facilities rely exclusively on coastal lands, which are typically in conservation and special management areas. Rather than limit this bill to specific renewable energy technologies, we recommend deleting section (d) and amending section (b) on page 2, lines 15-18 as follows:

- (b) This section shall not:
  - (1) Exempt renewable energy facilities from any land use priority, permit or approval process under chapters 183C, 205, 205A, or 343; or

Thank you for the opportunity to offer these comments.



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

**LINDA LINGLE**  
GOVERNOR  
**THEODORE E. LIU**  
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**ABBEY SETH MAYER**  
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Statement of  
**ABBEY S. MAYER**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**  
Tuesday, March 17, 2009  
3:00 P.M.  
State Capitol, Conference Room 225

in consideration of  
**HB245 HD1**  
**RELATING TO RENEWABLE ENERGY FACILITIES.**

Chair Gabbard and Vice Chair English, and Members of the Senate Committee on Energy and Environment.

The Office of Planning (OP) supports development of renewable energy facilities and technology in Hawai'i. The proposed HD1 now has language that makes clear that renewable energy facilities may be allowed rather than permitted by right within conservation or agricultural districts or special management areas. Additionally, the proposed HD1 directs the regulatory agencies involved with permitting or approving such facilities the opportunity to adopt rules specifying the types that may be allowed, criteria for siting decisions, and possible applicable mitigation measures. With these changes OP supports the proposed bill.

OP would like to point out that the process of drafting and amending administrative rules is labor- and resource-intensive for agencies. The agencies that will be impacted by this bill will be the Department of Land and Natural Resources, the State Land Use Commission, the individual counties through their planning departments, and OP through its Special Management (SMA) responsibility for Kaka'ako and Kalaeloa Community Development Districts.

Thank you for the opportunity to testify.

LINDA LINGLE  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON  
ENERGY AND ENVIRONMENT  
TUESDAY, MARCH 17, 2009  
3:00 p.m.  
Room 225

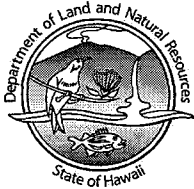
HOUSE BILL NO. 245, HD 1  
RELATING TO RENEWABLE ENERGY FACILITIES

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 245, House Draft 1. The Department of Agriculture supports this measure that provides for the protection of agricultural resources and activities when renewable energy facilities are considered. It limits the renewable energy facilities to be considered for Agricultural and Conservation District lands to those already permissible on Agricultural District land which include wind energy facilities (Section 205-4.5(a)(14) and Section 205-2(d)(4)), bio-fuel processing facilities (Section 205-4.5(a)(15) and Section 205-2(d)(5)), agricultural-energy facilities (Section 205-4.5(a)(16) and Section 205-2(d)(7)), and solar energy facilities (Section 205-2(d)(6)). Each of these facilities are already permissible in the Agricultural District with the conditions that they are related to or compatible with agricultural uses, do not adversely impact agricultural lands and/or uses in the vicinity, and are limited to agricultural lands with poor productivity potential.

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LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL  
RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
ENERGY AND ENVIRONMENT**

**Tuesday, March 17, 2009  
3:00 PM  
State Capitol, Conference Room 225**

**In consideration of  
HOUSE BILL 245, HOUSE DRAFT 1  
RELATING TO RENEWABLE ENERGY FACILITIES**

House Bill 245, House Draft 1 seeks to allow renewable energy facilities within the conservation and agricultural districts and special management areas. The Department of Land and Natural Resources (Department) supports this bill with amendments.

The Department believes that there is a need to develop renewable energy facility siting and design policies and guidelines for projects in the Conservation District so that renewable energy purveyors and those reviewing and authorizing such projects can safely and expeditiously locate facilities at appropriate sites, whether on land or at sea. Towards this end, the Department suggests that the bill be amended as follows:

- Page 2 line 20. This paragraph should be amended to better articulate the idea that the approving agency or authority that issues permits for renewable energy facilities can restrict the "type" of renewable energy facility within its jurisdictional purview. Also should include language that allows the agency to include restrictions or provision that protect natural and cultural resources.
- Page 2 line 14. This paragraph should include language to protect natural and cultural resources.

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
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*Harry A. Saunders*  
President

March 16, 2009

The Honorable Mike Gabbard, Chair;  
The Honorable J. Kalani English, Vice Chair  
and Members of the Senate Committee on Energy and Environment  
Hawai'i State Senate  
Hawai'i State Capitol Room 225  
Honolulu, Hawai'i 96813

Dear Chair Gabbard, Vice Chair English and Members of the Committee:

Subject: ***Support of HB 245, HD 1 Relating to Renewable Energy Facilities  
Hearing 3:00 p.m.; March 17, 2009 Conference Room 225***

Castle & Cooke Hawai'i supports the purpose of HB 245, HD 1 to affirm and clarify that renewable energy facilities (REF) are permissible and compatible uses within the conservation and agriculture districts and within the special management area. We believe this clarification is necessary and important to address existing statutory inconsistencies, and for fostering regulatory clarity, predictability and transparency that is essential for attracting private investment in renewable energy projects in Hawai'i. This will ultimately help Hawai'i achieve its mandates and goals for renewable energy and energy independence.

We seek clarification and assurances that REFs can be developed on Conservation and Agricultural Districts and Special Management Areas, all subject to existing EIS and permitting processes under HRS 343 (EIS) and Act 207 (2008) permitting.

We offer these comments to revise and refine HB 245, HD 1:

1. Section 2, clause (c) directs agencies to adopt rules pursuant to Chapter 91.
  - We support agency adoption of procedures, not rule making pursuant to Chapter 91 (see attached proposed revision)
  - House committee discussion concluded that rulemaking could be time consuming and confusing, and could defeat the purpose of this bill, and that direction to adopt procedures (instead of rulemaking) was desirable. This is reflected in paragraph (6) of Standing Committee Report No. 701 on HB 245, HD 1.

The Honorable Mike Gabbard, The Honorable J. Kalani English,  
and Members of the Senate Committee on Energy and Environment  
March 16, 2009  
Page Two

2. Section 2, clause (d) limits the effect of this bill to specified renewable energy facilities under HRS sections, all of which are for agricultural lands.
  - This clause appears to provide extra protections for agricultural lands, consistent with paragraph (1) of Standing Committee Report No. 701 on HB 245, HD 1. However, it could be interpreted to limit the effect of this bill to only renewable energy facilities on agricultural lands, and to conflict with the express intent to also include conservation and SMA lands.
  - Language is needed to clarify that clause (d) applies only to renewable energy facilities on agricultural lands.

Castle & Cooke respectfully requests your support for HB 245, HD 1, with these revisions. For your consideration, attached is HB 245, HD 1 with our comments thereon.

Mahalo and thank you for your consideration of our testimony. If you have any questions, please feel free to contact us:

Harry Saunders, President  
Castle & Cooke Hawai'i  
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Sincerely,

CASTLE & COOKE HAWAI'I



Harry A. Saunders  
President



**CASTLE & COOKE 3/11/09 COMMENTS**

**Report Title:**

Renewable Energy Facilities; Conservation and Agricultural Districts; Special Management Areas

**Description:**

Allows the development of renewable energy facilities on conservation and agricultural districts and special management areas; provided that the facilities comply with all applicable regulatory laws. (HB245 HD1)

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

**H.B. NO.** 245  
H.D. 1

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## 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 finds that the State's dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This dependence makes Hawaii extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the State's control.

Energy efficiency and the use of renewable energy resources will increase Hawaii's energy self-sufficiency and achieve broad societal benefits, including increased

energy security, resistance to oil prices, environmental sustainability, economic development, job creation, and food self-sufficiency.

The legislature also finds that achieving Hawaii's renewable energy goals may require the development of renewable energy facilities on conservation and agricultural districts or special management areas. While conservation and agricultural districts and special management areas contain many valuable resources for the State that need special protection, the benefits of energy self-sufficiency and the reduction of our reliance on petroleum-based energy renewable energy facilities, under proper supervision and oversight to protect agricultural resources and activities, and the public health, safety, and welfare, warrants those facilities being an allowed use within those districts and areas.

SECTION 2. Chapter 201N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201N- Conservation and agricultural districts; special management areas; allowed use. (a)**

Notwithstanding any law to the contrary, the siting, development, construction, and operation of a renewable

energy facility may be allowed within a conservation or agricultural district or special management area.

(b) This section shall not:

(1) Exempt renewable energy facilities from any permit or approval process under chapters 183C, 205, 205A, or 343; or

(2) Prevent any agency or authority that issues permits or approvals for renewable energy facilities from imposing reasonable and appropriate restrictions on the type of siting, development, construction, and operation of a renewable energy facility to protect agricultural resources and activities, and the environment or the health, safety, and welfare of the State.

(c) All agencies and authorities that issue permits or approvals for renewable energy facilities shall adopt rules pursuant to chapter 91 procedures to:

(1) Determine the type of renewable energy facility that may be allowed within a conservation or agricultural district or special management area;

(2) Determine criteria for the appropriate siting of renewable energy facilities within a conservation or agricultural district or special management area;

(3) Identify mitigation measures applicable to renewable energy facilities to protect agricultural resources and activities, and the environment and the health, safety, and welfare of the residents of the state; and

(4) Allow the energy resources coordinator to give priority to applications issued as a result of this section; provided that the priority shall not mitigate the effect of any law regulating renewable energy facilities.

(d) Notwithstanding any law to the contrary, for the purpose of this section, renewable energy facilities within the state agricultural district shall be limited to wind energy facilities pursuant to section 205-4.5(a)(14) and section 205-2(d)(4); bio-fuel processing facilities pursuant to section 205-4.5(a)(15) and section 205-2(d)(5); agricultural-energy facilities pursuant to section 205-4.5(a)(16) and section 205-2(d)(7); and solar energy facilities pursuant to section 205-2(d)(6)."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2020.

**DOWLING  
COMPANY, INC**

Room # 225      3:00 PM      March 17, 2009

**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT  
HB245, HD1                      RELATING TO RENEWABLE ENERGY FACILITIES**

**Chair Gabbarde, Vice-Chair English and Committee Members:**

My name is Jennifer Stites and I am the Green Development Manager for Dowling Company, Inc. ("DCI"). DCI is a Maui-based real estate development company that is committed to sustainable development. To guide this effort and determine our performance metrics, we have adopted the nationally recognized U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design ("LEED") rating system. We are especially proud and excited that DCI's first USGBC LEED certified project is our own office located in Wailuku, Maui. Our office was also the first USGBC LEED certified office on Maui.

DCI supports HB245, HD1 because it reduces entitlement requirements for renewable energy projects and, thus, expedites the development of renewables energy in the State of Hawaii to assist in meeting the goals of HCEI.

Thank you for the opportunity to submit testimony.



# SIERRA CLUB HAWAI'I CHAPTER

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## HOUSE COMMITTEE ON ENERGY AND ENVIRONMENT

March 17, 2000, 3:00 P.M.

### TESTIMONY IN OPPOSITION TO HB 245, HD1

Aloha Chair Gabbard and Members of the Committees:

The Sierra Club, Hawai'i Chapter, with over 5500 dues paying members statewide, **opposes** HB 245 HD1, allowing the development of renewable energy facilities within special management areas and conservation and agricultural districts. While we appreciate the intent behind the measure – ostensibly to expedite the development of renewable energy sources in Hawai'i – we believe the current regulatory structure already allows for the expeditious development of wind, wave, and solar energy facilities. Additional “clarification” may simply create unnecessary ambiguity and raise doubts about other activities that are normally permitted.

This measure is primarily directed at the conservation district. Most renewable energy facilities are already permitted within the agricultural classifications and, thus, no directive is needed to “clarify” the permissibility of renewable energy facilities in the agricultural district.

With regard to the conservation district, Haw. Rev. Stat. § 183C-4 already gives **broad** discretion to the Department to authorize activity on conservation land, stating "The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use." The Department's discretion is tempered only by the the limited instruction that "[t]he department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment." Haw. Rev. Stat. § 183C-4. Past practice and review of the permitted uses within the administrative rules should belie any concern that only uses that "preserve, protect, and conserve natural resources" are permitted on conservation land.

To the extent this Committee wishes to proceed with the proposed measure, we suggest simply amending Haw. Rev. Stat. § 183C-4 to state:

The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, wind, wave, and solar energy facilities, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use.”

We are in general agreement with proceeding with rule making, as stated in section (c). Clarification of what types of renewable energy facilities were possible in each subzone, for example, would give guidance to future developers. This type of discussions is probably best preserved for the Department of Land and Natural Resources to address.

Thank you for the opportunity to testify.