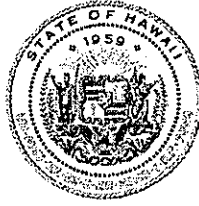


HB 122,

HD 1

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
ENERGY AND ENVIRONMENT  
and  
WATER, LAND, AND HOUSING**

**Thursday, March 17, 2011  
2:45 PM  
State Capitol, Conference Room 225**

**In consideration of  
HOUSE BILL 122, HOUSE DRAFT 1  
RELATING TO RENEWABLE ENERGY**

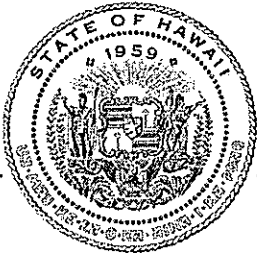
The purpose of House Bill 122, House Draft 1 is to extend the repeal date of Act 173, Session Laws of Hawaii, 2009, until July 1, 2020. House Bill 122, House Draft 1 is intended to facilitate the financing and development of renewable energy projects by exempting developers of renewable energy projects from subdivision requirements. The Department of Land and Natural Resources supports the bill.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**GUY H. KAULUKUKUI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
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  
KAIHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



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

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
INTERIM DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

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Fax: (808) 586-2377

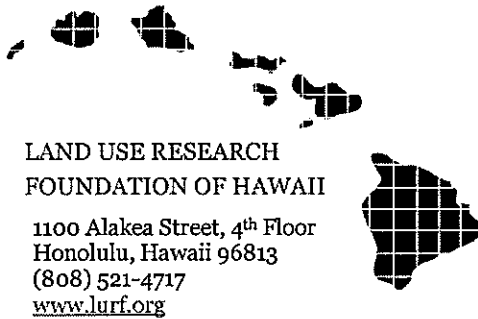
Statement of  
**RICHARD C. LIM**  
**Interim Director**  
Department of Business, Economic Development and Tourism  
before the  
**SENATE COMMITTEES ON  
ENERGY AND ENVIRONMENT  
AND  
WATER, LAND, AND HOUSING**  
Thursday, March 17, 2011  
2:45 p.m.  
State Capitol, Conference Room 225  
in consideration of  
**HB 122 HD1**  
**RELATING TO RENEWABLE ENERGY.**

Chairs Gabbard and Dela Cruz, Vice Chairs English and Solomon, and Members of the  
Committees.

The Department of Business, Economic Development and Tourism (DBEDT) supports  
HB 122 HD1, which extends the repeal date of Act 173 (2009) to July 1, 2020.

The ability of renewable energy developers to subdivide parcels under the Act for  
renewable energy facilities enables financial security and financing. This in turn aids the  
development of renewable energy projects. Therefore, we encourage your support of this  
measure.

Thank you for the opportunity to offer these comments.



LAND USE RESEARCH  
FOUNDATION OF HAWAII

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March 17, 2011

Senator Mike Gabbard, Chair and Senator J. Kalani English, Vice Chair  
Senate Committee on Energy and Environment  
Senator Donovan Dela Cruz, Chair and Senator Malama Solomon, Vice Chair  
Senate Committee on Water Land and Housing

**Comments and Support of HB 122, HD1 Relating to the Renewable Energy.**  
**(Extends repeal date of Act 173 (2009), exempting renewable energy projects from subdivision requirements)**

**Thursday, March 17, 2011 at 2:45 p.m. in CR 225**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF is in **support** of HB 122, HD1 which extends the repeal date of Act 173, Session Laws of Hawaii 2009 (Act 173). Act 173 exempts renewable energy projects from subdivision requirements for State agricultural or conservation lands. Although LURF would strongly support making Act 173 permanent, we also support extending the current July 1, 2013 sunset date to a the date proposed in HB 122, HD1, until July 1, 2020. LURF would also **support a proposed amendment** to clarify that wind energy facilities permitted in agricultural districts under the land use law (Hawaii Revised Statutes (HRS) §205-2(d) (4) and HRS §205-2(d) (8)), are exempt from subdivision requirements, similar to solar energy facilities.

**HB 122, HD1.** The purpose of Act 173 was to facilitate the financing and development of renewable energy projects by allowing the transfer of an interest in agricultural or conservation land for a renewable energy project, without the requirement of a subdivision or land court approval. Renewable energy projects require acreage for facilities and access easements in configurations which often times do not coincide with existing, already subdivided lot boundaries or parcels established by the land court system. Current laws generally prohibit the transfer of such interests of land which have not been subdivided or otherwise shown on land court maps. Act 173 was enacted to address this issue, and allows the lands for renewable energy projects to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision or land court approvals. Since its passage, Act 173 has assisted in expediting the process for renewable energy projects, while still protecting the health, safety and welfare of the public.

**LURF's Position.** LURF and its members support and employ solar energy and other renewable energy devices and we also **support HB 122, HD1**, which would continue to allow and expedite the financing and development of renewable energy facilities by allowing leases and easements pertaining to renewable energy facilities on agricultural and conservation lands

to be created for mortgages and other conveyances. Act 173 is legislation that will ensure that renewable energy projects succeed and lead Hawaii to a sustainable future.

While we believe that the reference to “Any renewable energy facilities” in the current HRS §201N-14(d) (3) (B) would also include wind energy facilities, LURF would also support a proposed amendment to clarify that wind energy facilities permitted in agricultural districts under the land use law (HRS §205-2(d) (4) and HRS §205-2(d) (8)), are exempt from subdivision requirements, similar to solar energy facilities.

The proposed amendment to 201N-14(d) (3) would add language to specifically exempt wind energy facilities from subdivision requirements, and could read as follows:

- “(3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for:
- (A) Solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E; [and]
  - (B) **Wind energy facilities permitted under sections 205-2(d) (4) and (8), including the appurtenances associated with the production and transmission of wind generated energy; and**
  - (C) Any renewable energy facilities approved by the land use commission or county planning commission under chapter 205;”

Thank you for the opportunity to express our **strong support** for **HB 122, HD1 and the proposed amendment.**



## KAMEHAMEHA SCHOOLS

TESTIMONY TO THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT AND SENATE  
COMMITTEE ON WATER, LAND, AND HOUSING

Hearing Date: Thursday, March 17, 2011  
2:45 p.m., Conference Room 225

Good Afternoon Chair Gabbard and Dela Cruz; Vice Chair English and Solomon:

RE: Testimony in Support of House Bill No. 122 HD1 and Proposed Amendment -  
Relating to Renewable Energy

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of HB 122 HD1 because it will facilitate the financing and development of renewable energy projects by exempting developers of renewable energy projects from subdivision requirements.

We would also like to respectfully submit a proposed amendment which seeks to clarify that wind energy facilities permitted in state agricultural districts under the Land Use Law (§205-2(d)(4) and §205-2(d)(8)), are exempt from subdivision requirements, similar to solar energy facilities.

The proposal amends section 201N-14(d)(3) by adding language to exempt wind energy facilities from subdivision requirements to read:

- "(3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for:
- (A) Solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E; ~~and~~
  - (B) Wind energy facilities permitted under sections 205-2(d)(4) and (8), including the appurtenances associated with the production and transmission of wind generated energy;  
and
  - (C) Any renewable energy facilities approved by the land use commission or county planning commission under chapter 205;"

SECTION 1 of the bill has also been amended to reflect the proposed amendment.

567 SOUTH KING STREET HONOLULU, HAWAII 96813 TELEPHONE (808) 523-6200 FAX (808) 523-6374

*Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop*

Thank you for the opportunity to testify in support of HB 122 HD1 and we hope that you will consider the proposed amendment described above and attached for your review.

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

**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. *Renewal energy facilities*  
6 *include facilities for generating and producing energy using*  
7 *wind, solar, falling water, biogas, geothermal, ocean currents*  
8 *and waves, biomass, biofuels, and hydrogen produced from renewal*  
9 *sources.* The purpose of Act 173 was to facilitate the financing  
10 and development of renewable energy projects by allowing leases  
11 and easements pertaining to renewable energy projects, together  
12 with mortgages and other conveyances as security for finance, to  
13 be created, enforced, and recorded, without requiring the  
14 landowner to obtain formal subdivision approval, and instead  
15 requiring approval for exemption from subdivision requirements,  
16 from the applicable county or other approving agency. *Further,*  
17 *Act 173 has to be amended to make it clear that wind energy*



1 *facilities within the state agricultural land use district shall*  
2 *qualify for exemption from subdivision requirements.*

3       The need to encourage and facilitate renewable energy  
4 facilities in the State persists, but critical sections of Act  
5 173 will be repealed on July 1, 2013, unless the legislature  
6 acts.

7       The purpose of this Act is to extend the repeal date of Act  
8 173 to highlight the State's commitment to encouraging and  
9 facilitating renewable energy projects throughout the State.

10       SECTION 2. Section 201N-14, Hawaii Revised Statutes, is  
11 amended by amending subsection (d) to read as follows:

12       "(d) The exemption from subdivision requirements  
13 authorized by this section shall only apply to leases and  
14 easements that meet the following requirements and shall be  
15 subject to the following limitations:

16       (1) The lease or easement shall restrict the use of the  
17 leased land or easement area to the development and  
18 operation of a renewable energy project; provided  
19 that, to comply with section 205-4.6, agricultural  
20 uses and activities shall not be restricted on  
21 agricultural land;

- 1           (2) The lease shall have an initial term of at least  
2                   twenty years;
- 3           (3) With respect to leases and easements on lands within  
4                   an agricultural state land use district, the exemption  
5                   from subdivision requirements provided by this section  
6                   shall be for:
- 7                   (A) Solar energy facilities permitted under section  
8                           205-2(d)(6), on land with soil classified by the  
9                           land study bureau's detailed land classification  
10                           as overall (master) productivity rating class D  
11                           or E; [and]
- 12                   (B) Wind energy facilities permitted under sections  
13                           205-2(d)(4) and (8), including the appurtenances  
14                           associated with the production and transmission  
15                           of wind generated energy; and
- 16                   (C) Any renewable energy facilities approved by the  
17                           land use commission or county planning commission  
18                           under chapter 205;
- 19           (4) With respect to leases and easements on lands within a  
20                   conservation state land use district, the exemption  
21                   from subdivision requirements provided by this section  
22                   shall be for:

- 1 (A) Wind energy facilities, including the  
2 appurtenances associated with the production and  
3 transmission of wind-generated energy; and  
4 (B) Any renewable energy facilities permitted or  
5 approved by the board of land and natural  
6 resources under chapter 183C; and  
7 (5) The county agency charged with administering  
8 subdivisions in the county in which the renewable  
9 energy project is to be situated or, if the land is in  
10 a conservation state land use district, the department  
11 of land and natural resources, shall approve the  
12 exemption from subdivision requirements within ninety  
13 days after the project's developer and the owner of  
14 the land on which the renewable energy project is to  
15 be situated have submitted the conceptual schematics  
16 or preliminary plans and specifications for the  
17 renewable energy project to the county agency or the  
18 department of land and natural resources, and have  
19 provided to such county agency or the department of  
20 land and natural resources, as applicable, a  
21 certification and agreement that all applicable and  
22 appropriate environmental reviews and permitting shall

1           be completed prior to commencement of development of  
2           the renewable energy project. If, on the ninety-first  
3           day, an exemption has not been approved, it shall be  
4           deemed disapproved by the county agency or the  
5           department of land and natural resources, whichever is  
6           applicable."

7           SECTION 3. Act 173, Session Laws of Hawaii 2009, is  
8           amended by amending section 7 to read as follows:

9           "SECTION 4. This Act shall take effect upon its approval;  
10          provided that sections 2 and 4 of this Act shall be repealed on  
11          July 1, [~~2013-~~] 2020."

12          SECTION 5. Statutory material to be repealed is bracketed  
13          and stricken. New statutory material is underscored.

14          SECTION 6. This Act shall take effect upon its approval.