

JAN 21 2011

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1 SECTION 1. Senate Concurrent Resolution No. 132, S.D. 1
2 (2009), established a task force to determine the economic
3 contributions of the construction industry in Hawaii and to
4 develop a series of proposals for state actions to preserve and
5 create new jobs in the local construction industry. This Act
6 implements one of the task force's proposals in conjunction with
7 the Abercrombie administration's support for state actions to
8 create new jobs in Hawaii's construction industry.

9 In addition, in 2010, the senate committee on economic
10 development and technology and the house committee on economic
11 revitalization, business, and military affairs convened an
12 informal small business discussion group to address the most
13 critical issues facing the small business sectors within
14 Hawaii's economy. Representatives from the Chamber of Commerce
15 of Hawaii, construction and trades industries, community
16 nonprofits, the agricultural sector, food and restaurant
17 industries, retailing, the science and technology sector, the
18 commercial transportation industry, and interested stakeholders



1 developed a package of bills that address the most pressing
2 problems facing Hawaii's small business community.

3 The purpose of this Act is to support the findings of the
4 small business working group and the recommendations proposed by
5 the construction industry task force by:

6 (1) Establishing an expedited renewable energy facility
7 siting process for state and county permits;

8 (2) Directing the state energy resources coordinator to
9 implement and further state policies in developing
10 indigenous renewable energy resources and decreasing
11 Hawaii's dependency on imported fossil fuels; and

12 (3) Giving the state energy resources coordinator the
13 authority to implement and further state renewable
14 energy policies and compelling interest in expediting
15 the development of renewable energy facilities, while
16 ensuring public review and environmental preservation,
17 and protecting the public's health, safety, and
18 welfare consistent with the goals, purposes, and
19 policies of this Act.

20 SECTION 2. The Hawaii Revised Statutes is amended by
21 adding a new chapter to be appropriately designated and to read
22 as follows:



1 "CHAPTER

2 RENEWABLE ENERGY FACILITY SITING PROCESS

3 § -1 Definitions. For the purpose of this chapter:

4 "Applicant" means any person or entity who submits an
5 application to the energy resources coordinator for a permit or
6 approval for a renewable energy facility.

7 "County agency" means a department, division, office,
8 officer, agency, or other organization of a county government,
9 including a county council.

10 "County law" means a county charter provision, ordinance,
11 or administrative rule.

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

14 "Delegated environmental permit" means an air or water
15 quality permit subject to issuance by the department of health
16 under authority delegated by the United States Environmental
17 Protection Agency.

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

20 "Permit":

- 21 (1) Means any approval, no matter the nomenclature,
22 necessary for the siting, development, construction,



1 or operation of a renewable energy facility; except
2 that the term shall not include:

- 3 (A) Acceptance by an accepting authority of an
4 environmental impact statement on a facility;
- 5 (B) Issuance by a county agency of a building or
6 grading permit; or
- 7 (C) Approval by the public utilities commission of a
8 power purchase agreement between a renewable
9 energy facility owner and a public utility; and

10 (2) Includes:

- 11 (A) A state land use reclassification;
- 12 (B) A county development, community, or community
13 development plan amendment;
- 14 (C) A county zoning map amendment;
- 15 (D) A state conservation district use permit;
- 16 (E) A state special permit for an agricultural or
17 rural district;
- 18 (F) A special management area permit;
- 19 (G) A shoreline setback variance;
- 20 (H) A grant of an easement on state or county real
21 property; and



1 (I) Any other state or county permit or approval
2 applicable and necessary for the siting,
3 development, construction, or operation of a
4 renewable energy facility, except as set forth in
5 paragraph (1) above.

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

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

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

- 16 (1) The land parcel on which the facility is situated;
- 17 (2) Any renewable energy production structure or
18 equipment;
- 19 (3) Any energy transmission line from the facility to a
20 public utility's electricity distribution system;
- 21 (4) Any on-site infrastructure; and



1 (5) Any on-site building, structure, other improvement, or
2 equipment necessary for the production of electricity
3 or biofuel from the renewable energy site,
4 transmission of the electricity or biofuel, or any
5 accommodation for employees of the facility.

6 "State agency" means a department, division, office,
7 officer, agency, or other organization of the state government,
8 but not the legislature.

9 "State law" means a state constitutional provision,
10 statute, or administrative rule.

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

15 § -2 **Staff and contractor; energy resources coordinator;**
16 **renewable energy facility siting process.** The energy resources
17 coordinator may employ and dismiss staff without regard to
18 chapters 76 and 89 to assist the coordinator in the
19 implementation of this chapter. The salary of each staff member
20 shall be set by the coordinator. Each staff member shall be
21 entitled to participate in any public employee benefit program
22 plan or privilege.



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

6 § -3 **General duties of the coordinator.** The coordinator
7 shall:

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



1 expediting the development of renewable energy
2 facilities, while ensuring, and not circumventing,
3 opportunity for public review and comment, mitigating
4 potential environmental and other impacts from
5 renewable energy projects, and protecting the public's
6 health, safety, and welfare. In furtherance of this
7 intent, the coordinator shall have the power and
8 authority, as provided under this chapter, to receive,
9 accept, review, coordinate, and approve all
10 applications for permits necessary for the development
11 of a renewable energy facility on an expedited basis.
12 The coordinator shall coordinate and process permits
13 concurrently and shall take no longer than six months
14 following receipt of a completed consolidated
15 application to complete the review and approval of the
16 application and all permits relating thereto, subject
17 only to final acceptance of an environmental
18 assessment or environmental impact statement, or both,
19 as may be required under chapter 343;

20 (2) Receive and accept a consolidated application, in a
21 form as the coordinator shall prescribe as required
22 under section -15, for the approval of the



1 siting, development, construction, and operation of a
2 renewable energy facility. Within ten days following
3 receipt of an application or an amendment or
4 supplement thereto, the coordinator shall give written
5 notice to the applicant as to the coordinator's
6 acceptance of the application, amendment, or
7 supplement, or as to any deficiencies relating
8 thereto;

9 (3) Identify all state and county permits applicable and
10 necessary for approval of the renewable energy
11 facility;

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

16 (5) Work with other federal, state, and county agencies
17 and the applicant to determine the terms and
18 conditions of the permits that are necessary to
19 effectuate this chapter while still protecting the
20 public health, safety, and welfare to the extent
21 practicable without unduly delaying, impairing, or



1 frustrating the purposes, policies, and goals of this
2 chapter.

3 § -4 Consolidated application; fee; pre-application
4 conference; public notice of receipt of application. (a) The
5 coordinator shall establish a consolidated application in
6 accordance with section -15 and require the applicant to pay
7 a fee with the consolidated application. The coordinator shall
8 establish the staffing for the consolidated application and set
9 the fee at an amount mutually agreed upon by the applicant and
10 the coordinator; provided that the fee shall be sufficient to
11 cover no more than the reasonable, actual, and direct costs and
12 expenses of the coordinator, coordinator's staff, contractor,
13 and relevant state and county agencies providing input, review,
14 and advice on the state and county permits applicable and
15 necessary for and directly related to the applicant's facility.
16 Upon receipt of the fee or periodically thereafter, the
17 coordinator shall transmit to each relevant state or county
18 agency the portion of the fee that reflects the cost to that
19 state or county agency for providing its input, review, and
20 advice.

21 (b) Subject to the ten-day deadline set forth in
22 section -3(2), before accepting a consolidated application,



1 the coordinator may hold a pre-application conference with the
2 prospective applicant to discuss all the state and county
3 permits necessary for the facility and notify the prospective
4 applicant of the information that must be submitted with the
5 consolidated application.

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

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

19 § -5 **Approval of state permits.** (a) When the
20 coordinator receives an application for a renewable energy
21 facility that requires state permits, then concurrently with the
22 determinations and processes of the coordinator under



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

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



1 environmental permit, or acceptance of the environmental
2 assessment or environmental impact statement, or both, as
3 applicable.

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



1 the coordinator's approval of all state permits in one
2 consolidated document.

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

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

12 § -6 Recommendation for approval of county permits;
13 approval of county permits. (a) Within fifteen days following
14 the coordinator's receipt of a completed application for a
15 renewable energy facility that requires county permits, and
16 concurrently with the determination of the coordinator under
17 section -5(a) and the other sections of this chapter, the
18 coordinator, after consultation with relevant federal, state,
19 and county agencies, shall determine the terms and conditions to
20 be imposed on the county permits that are necessary to protect
21 the public health, safety, and welfare to the extent practicable
22 without unduly delaying, impairing, or frustrating the purposes,



1 policies, and goals of this chapter. The terms and conditions
2 may require the applicant to improve off-site infrastructure or
3 establish measures to mitigate significant adverse environmental
4 effects, but only to the extent directly caused by the
5 applicant's renewable energy facility.

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

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

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

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



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

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

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

21 The coordinator shall have ten days after receipt of the
22 notification from the county agency to determine whether to



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

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

20 § -7 Coordination with federal permits, delegated
21 environmental permits, and environmental impact review process.

22 (a) Concurrently with the sixty-day period set forth in



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

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

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

16 § -8 Public hearing by coordinator. (a) If a federal,
17 state, or county law requires a state or county agency to hold a
18 public hearing on a permit application before making a decision
19 on the permit, then the coordinator shall hold the public
20 hearing in place of the state or county agency within the sixty-
21 day period set forth in section -5(a). To the extent



1 practicable, the coordinator shall consolidate public hearings
2 to cover all permit applications and required public hearings.

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

10 § -9 Land use, zoning, building, and construction status
11 of renewable energy facility; state and county permits. (a) A
12 renewable energy facility, and all necessary state and county
13 permits for which have been approved under this chapter, shall
14 be deemed a permitted principal use on the land parcel upon
15 which it is situated. The land use commission, department of
16 land and natural resources, and the applicable county shall
17 revise any state land use district map and county zoning map
18 appropriately to reflect this status.

19 (b) The final plans and specifications of the renewable
20 energy facility, as set forth in the relevant state and county
21 permits approved pursuant to this chapter, shall be deemed to



1 constitute the zoning, building, and construction standards for
2 the facility and the land parcel upon which it is situated.

3 For the purpose of applicable state and county law:

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

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

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

17 § -10 Environmental impact review process;

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

21 (b) Nothing in this chapter or chapter 343 shall prohibit
22 the review and processing by the coordinator of applications for



1 permits for a renewable energy facility concurrently with the
2 preparation and processing by the applicant of an environmental
3 impact statement for the facility. To accomplish the concurrent
4 review, the coordinator shall, at the applicant's request,
5 consent to the receipt and review of portions of a draft of an
6 environmental impact statement before its completion.

7 § -11 **Power purchase agreement not a state permit under**
8 **this chapter; coordination of efforts.** A power purchase
9 agreement between a renewable energy facility owner and a public
10 utility shall not be a permit subject to approval by the
11 coordinator. Any power purchase agreement shall be subject to
12 the applicable provisions of chapter 269. However, the
13 coordinator shall establish and implement a system to coordinate
14 and concurrently process the review and approval by the public
15 utilities commission of any power purchase agreement for
16 electricity generated by a renewable energy facility. The
17 coordinator may convene an interagency working group for the
18 purpose of this section.

19 § -12 **Building or grading permit required from county.**
20 A grading or building permit issued by the applicable county
21 shall be required to grade a site or construct a structure for a
22 renewable energy facility. The applicable county shall



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

9 § -13 **Judicial review of dispute regarding approved**
10 **permit; inapplicability of contested case procedures.** (a) Any
11 person aggrieved by the approval of a state or county permit or
12 term or condition of any approved permit may file an action for
13 relief in the circuit court. Notwithstanding any other
14 provision of this chapter to the contrary, for the purposes of
15 bringing judicial action under this subsection, the term "person
16 aggrieved" shall include the applicant and any state or county
17 agency, office, council, or other government entity that has
18 decision making authority related to the approved permit. Other
19 parties, pursuant to court action, may be adjudged aggrieved.

20 (b) The inapplicability of the use of contested case
21 procedures pursuant to chapter 91 in the approval of any state



1 or county permit pursuant to this chapter shall not be grounds
2 for any judicial appeal.

3 § -14 **Inapplicability of maximum time period rule**
4 **requirement.** Section 91-13.5 shall not apply to the
5 coordinator. The deadlines for review and action upon a
6 consolidated application for a renewable energy facility shall
7 be subject to this chapter.

8 § -15 **Rules.** (a) Within thirty days from the effective
9 date of this chapter, the coordinator shall, after consultation
10 with prospective applicants and related governmental agencies as
11 the coordinator deems necessary or advisable:

12 (1) Adopt a consolidated application form which is
13 consistent with the streamlining and concurrent agency
14 approval processing goals of this chapter; and

15 (2) Adopt interim rules to implement this chapter without
16 regard to the notice and public hearing requirements
17 of section 91-3 or the small business impact review
18 requirements of chapter 201M.

19 (b) Any amendment of the interim rules shall be subject to
20 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 hearing held by
14 an agency immediately prior to a judicial review of a
15 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 343-
 19 6, the agency initially receiving and agreeing to process the
 20 request for approval shall prepare an environmental assessment
 21 of the proposed action at the earliest practicable time to
 22 determine whether an environmental impact statement shall be



1 required; provided that, for an action that proposes the
2 establishment of a renewable energy facility, at the renewable
3 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~~] the
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 2011-2012 and
 2 the same sum or so much thereof as may be necessary for fiscal
 3 year 2012-2013 for the establishment and operation of the
 4 renewable energy facility siting process established under this
 5 Act.

6 The sums appropriated shall be expended by the department
 7 of business, economic development, and tourism for the purposes
 8 of this Act.

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

11 SECTION 11. This Act shall take effect upon its approval;
 12 provided that section 9 shall take effect on July 1, 2011.

13

INTRODUCED BY:

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[Signature]



Report Title:

Construction Task Force (2010); 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; appropriates funds for establishment and operations.

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

