

---

---

## A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1           SECTION 1. In 2009, the legislature adopted senate  
2 concurrent resolution no. 132, S.D. 1, which established the  
3 construction industry task force (task force) to determine the  
4 economic value of the construction industry in Hawaii. As  
5 directed in the concurrent resolution, the task force was  
6 charged with developing a series of recommendations to stimulate  
7 the construction industry and create new jobs in the local  
8 construction industry. Unfortunately, to date, many of the task  
9 force's recommendations have yet to be enacted by the  
10 legislature. The intent of this Act is to enact and implement  
11 one of the recommendations of the task force in an effort to  
12 support the local construction industry.

13           The legislature recognizes the vital importance of  
14 increasing Hawaii's energy self-sufficiency. Hawaii's over-  
15 dependency on imported fossil fuels threatens the health,  
16 safety, and welfare of the people of Hawaii and our economic and  
17 environmental security and future. Hawaii's over-dependency on  
18 imported fossil fuels leaves Hawaii residents extremely



1 vulnerable to events and factors that are not within the control  
2 of this State or our residents, such as oil embargos, supply  
3 disruption, international market dysfunction, and resulting cost  
4 increases. Fossil fuel dependency and vulnerability relinquish  
5 Hawaii's control over the future of this State's energy  
6 consumption and costs which pose immediate and long-term threats  
7 to the health, safety, and welfare of Hawaii's residents.

8       The critical need to immediately develop renewable energy  
9 projects to develop and utilize Hawaii's bountiful indigenous  
10 sources of renewable energy and reduce our over-dependency on  
11 imported fossil fuels requires the legislature to address  
12 duplicative and time consuming processes in order to encourage  
13 expeditious development of feasible renewable energy projects.

14       The legislature recognizes that private sector development  
15 of large scale projects must be encouraged and is necessary to  
16 meet the state mandate and goals for renewable energy. These  
17 renewable energy projects are often complex, large-scale  
18 undertakings requiring substantial investment and a substantial  
19 number of permits. The process for obtaining the necessary  
20 permits for renewable energy projects and developments and the  
21 process for meeting state, county, and federal rules and  
22 regulations has for decades been described as overly time-



1 consuming, cumbersome, onerous, and costly. The "Hawaii  
2 Integrated Energy Policy Report" of 1991 found that the permit  
3 and approval process required for the development and siting of  
4 energy facilities for a single project can take up to seven  
5 years to complete. Thus, the inefficiency of the permitting and  
6 development process acts as a substantial barrier and impediment  
7 to meeting Hawaii's vital renewable energy needs and mandates by  
8 creating significant delays and adding costs, deterring  
9 investment and impacting the feasibility of the development and  
10 implementation of renewable energy projects.

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

22 The purpose of this Act is to:



- 1           (1) Establish an expedited renewable energy facility  
2           siting process for state and county permits necessary  
3           for the siting, development, construction, and  
4           operation of a renewable energy facility;
- 5           (2) Direct the state energy resources coordinator to  
6           implement and further the state policies and  
7           compelling state interest in developing indigenous  
8           renewable energy resources, except geothermal  
9           resources, and decreasing Hawaii's dependency on  
10          imported fossil fuels in furtherance of energy self-  
11          sufficiency, energy security, and reduction of  
12          greenhouse gas emissions through coordination,  
13          concurrent approval processes, elimination of  
14          redundancy in the permitting process, clear and fair  
15          deadlines, and other efficiencies in processes and  
16          procedures established pursuant to the authority given  
17          to the state energy resources coordinator in this Act;  
18          and
- 19          (3) Give to the state energy resources coordinator the  
20          necessary power and authority to implement and further  
21          state renewable energy policies and compelling  
22          interest in expediting the development of renewable



1 energy facilities, while ensuring, and not  
2 circumventing, opportunity for public review and  
3 comment, preserving the environment and mitigating  
4 potential environmental and other impacts from  
5 renewable energy projects, and protecting the public's  
6 health, safety, and welfare consistent with the goals,  
7 purposes, and policies of this Act.

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

11 "PART . RENEWABLE ENERGY FACILITY SITING PROCESS

12 §201N-A Definitions. For the purpose of this part:

13 "Applicant" means any person or entity who submits an  
14 application to the energy resources coordinator for a permit or  
15 approval for a renewable energy facility.

16 "County agency" means a department, division, office,  
17 officer, agency, or other organization of a county government,  
18 including a county council.

19 "County law" means a county charter provision, ordinance,  
20 or administrative rule.

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



1 "Delegated environmental permit" means an air or water  
2 quality permit subject to issuance by the department of health  
3 under authority delegated by the United States Environmental  
4 Protection Agency.

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

7 "Permit":

8 (1) Means any approval, no matter the nomenclature,  
9 necessary for the siting, development, construction,  
10 or operation of a renewable energy facility; except  
11 that the term shall not include:

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

14 (B) Issuance by a county agency of a building or  
15 grading permit; or

16 (C) Approval by the public utilities commission of a  
17 power purchase agreement between a renewable  
18 energy facility owner and a public utility; and

19 (2) Includes:

20 (A) A state land use reclassification;

21 (B) A county development, community, or community  
22 development plan amendment;



- 1 (C) A county zoning map amendment;
- 2 (D) A state conservation district use permit;
- 3 (E) A state special permit for an agricultural or
- 4 rural district;
- 5 (F) A special management area permit;
- 6 (G) A shoreline setback variance;
- 7 (H) A grant of an easement on state or county real
- 8 property; and
- 9 (I) Any other state or county permit or approval
- 10 applicable and necessary for the siting,
- 11 development, construction, or operation of a
- 12 renewable energy facility, except as set forth in
- 13 paragraph (1) of this definition.

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

17 "Renewable energy" has the same meaning as in section 269-  
18 91, excluding energy generated or produced using geothermal  
19 sources.

20 "Renewable energy facility" or "facility" means a facility  
21 located in the State that is planned to have the capacity to  
22 produce from renewable energy at least two hundred megawatts of



1 electricity. The term includes any of the following associated  
2 with the facility:

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

14 "State agency" means a department, division, office,  
15 officer, agency, or other organization of the state government,  
16 but not the legislature.

17 "State law" means a state constitutional provision,  
18 statute, or administrative rule.

19 "State permit" means a permit that is subject to the  
20 approval of a state agency pursuant to federal or state law;  
21 except that the term does not include a delegated environmental  
22 permit.





1           §201N-B Staff and contractor; energy resources  
2 coordinator; renewable energy facility siting process. The  
3 energy resources coordinator may employ and dismiss staff  
4 without regard to chapters 76 and 89 to assist the coordinator  
5 in the implementation of this part. The salary of each staff  
6 member shall be set by the coordinator. Each staff member shall  
7 be entitled to participate in any public employee benefit  
8 program plan or privilege.

9           The coordinator may also contract persons to assist the  
10 coordinator in the implementation of this part. The  
11 coordinator's power to charge an applicant for reimbursement of  
12 staff costs and expenses shall be subject to the guidelines and  
13 limitations set forth in section 201N-D.

14           §201N-C General duties of the coordinator. The  
15 coordinator shall:

16           (1) Implement and further state policies and the  
17 compelling state interest in developing indigenous  
18 renewable energy resources and decreasing Hawaii's  
19 dependency on imported fossil fuels in furtherance of  
20 energy self-sufficiency, energy security, and  
21 reduction of greenhouse gas emissions through  
22 coordination, concurrent approval processes,



- 1           elimination of redundancy in the permitting process,  
2           clear and fair deadlines, and other efficiencies in  
3           processes and procedures established pursuant to the  
4           authority given to the coordinator in this part;
- 5           (2) Have the power and authority, which shall be liberally  
6           construed, necessary to implement and further the  
7           state renewable energy policies, mandate, and  
8           compelling interest in expediting the development of  
9           renewable energy facilities, while ensuring, and not  
10          circumventing, opportunity for public review and  
11          comment, mitigating potential environmental and other  
12          impacts from renewable energy projects, and protecting  
13          the public's health, safety, and welfare;
- 14          (3) Have the power and authority, as provided under this  
15          part, to receive, accept, review, coordinate, and  
16          approve all applications for permits necessary for the  
17          development of a renewable energy facility on an  
18          expedited basis;
- 19          (4) Coordinate and process permits concurrently and shall  
20          take not longer than six months following receipt of a  
21          completed consolidated application to complete the  
22          review and approval of the application and all permits



1 relating thereto, subject only to final acceptance of  
2 an environmental assessment or environmental impact  
3 statement, or both, as may be required under chapter  
4 343;

5 (5) Receive and accept a consolidated application, in a  
6 form as the coordinator shall prescribe as required  
7 under section 201N-Q, for the approval of the siting,  
8 development, construction, and operation of a  
9 renewable energy facility. Within ten days following  
10 receipt of an application or an amendment or  
11 supplement thereto, the coordinator shall give written  
12 notice to the applicant as to the coordinator's  
13 acceptance of the application, amendment, or  
14 supplement, or as to any deficiencies relating  
15 thereto;

16 (6) Identify all state and county permits applicable and  
17 necessary for approval of the renewable energy  
18 facility;

19 (7) Gather from the applicant any information the  
20 coordinator finds relevant and necessary to review,  
21 process, and make a decision on the permit  
22 application; and



1           (8) Work with other federal, state, and county agencies  
2           and the applicant to determine the terms and  
3           conditions of the permits that are necessary to  
4           effectuate this part while still protecting the public  
5           health, safety, and welfare to the extent practicable  
6           without unduly delaying, impairing, or frustrating the  
7           purposes, policies, and goals of this part.

8           §201N-D Consolidated application; fee; pre-application  
9           conference; public notice of receipt of application. (a) The  
10          coordinator shall establish a consolidated application in  
11          accordance with section 201N-Q and require the applicant to pay  
12          a fee with the consolidated application. The coordinator shall  
13          establish the staffing for the consolidated application and set  
14          the fee at an amount mutually agreed upon by the applicant and  
15          the coordinator, but sufficient to cover not more than the  
16          reasonable, actual, and direct costs and expenses of the  
17          coordinator, coordinator's staff, and contractor, and relevant  
18          state and county agencies to provide input and advice on the  
19          state and county permits applicable and necessary for and  
20          directly related to the applicant's facility. Upon receipt of  
21          the fee or periodically thereafter, the coordinator shall  
22          transmit to each relevant state or county agency the portion of



1 the fee that reflects the cost to that state or county agency  
2 for providing its input, review, and advice.

3 (b) Subject to the ten-day deadline set forth in section  
4 201N-C(5), before accepting a consolidated application, the  
5 coordinator may hold a pre-application conference with the  
6 prospective applicant to discuss all the state and county  
7 permits necessary for the facility and notify the prospective  
8 applicant of the information that must be submitted with the  
9 consolidated application.

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

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



1           §201N-E Approval of state permits. (a) When the  
2 coordinator receives an application for a renewable energy  
3 facility that requires state permits, then concurrently with the  
4 determinations and processes of the coordinator under section  
5 201N-F(a) and the other sections of this part and within the  
6 sixty days following receipt of a completed consolidated  
7 application, the coordinator, after consultation with relevant  
8 federal, state, and county agencies, shall determine the terms  
9 and conditions to be imposed on the state permits that are  
10 necessary to protect the public health, safety, and welfare to  
11 the extent practicable without unduly delaying, impairing, or  
12 frustrating the purposes, policies, and goals of this part. The  
13 terms and conditions may require the applicant to improve off-  
14 site infrastructure or establish measures to mitigate  
15 significant adverse environmental effects, but only to the  
16 extent directly caused by the applicant's renewable energy  
17 facility.

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

1 assessment or environmental impact statement is a prerequisite  
2 to the approval of a state permit required for the facility,  
3 then the coordinator's determination shall be made but shall be  
4 conditioned upon approval of the federal permit or delegated  
5 environmental permit, or acceptance of the environmental  
6 assessment or environmental impact statement, or both, as  
7 applicable.

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



1 regarding the acceptance of the statement, then the state  
2 permits shall be subject to the order entered with the final  
3 judicial decision on the dispute. The coordinator may publish  
4 the coordinator's approval of all state permits in one  
5 consolidated document.

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

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

15 **§201N-F Recommendation for approval of county permits;**  
16 **approval of county permits.** (a) Within fifteen days following  
17 the coordinator's receipt of a completed application for a  
18 renewable energy facility that requires county permits, and  
19 concurrently with the determination of the coordinator under  
20 section 201N-E(a) and the other sections of this chapter, the  
21 coordinator, after consultation with relevant federal, state,  
22 and county agencies, shall determine the terms and conditions to





1 be imposed on the county permits that are necessary to protect  
2 the public health, safety, and welfare to the extent practicable  
3 without unduly delaying, impairing, or frustrating the purposes,  
4 policies, and goals of this part. The terms and conditions may  
5 require the applicant to improve off-site infrastructure or  
6 establish measures to mitigate significant adverse environmental  
7 effects, but only to the extent directly caused by the  
8 applicant's renewable energy facility.

9 The coordinator shall make the determination for all county  
10 permits at the same time the determination is made for state  
11 permits under section 201N-E(a).

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

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

21 (c) Within forty-five days of receipt of the  
22 recommendation from the coordinator, each relevant county agency



1 may approve the county permit under its jurisdiction with the  
2 terms and conditions recommended by the coordinator or amended  
3 by the county agency. The county agency may charge the  
4 applicant a reasonable fee for reviewing and acting on the  
5 permit, consistent with established county agency fees.

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

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



1 coordinator's recommended terms and conditions in accordance  
2 with subsection (d).

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

20       (f) Notwithstanding the action by the coordinator on a  
21 county permit approved pursuant to this section, the relevant



1 county agency shall be responsible for monitoring and enforcing  
2 the terms and conditions of the permit.

3 §201N-G Coordination with federal permits, delegated  
4 environmental permits, and environmental impact review process.

5 (a) Concurrently with the sixty-day period set forth in section  
6 201N-E(a), the coordinator shall establish and implement a  
7 system to coordinate the approval of required federal permits  
8 with state and county permits for a renewable energy facility.  
9 The system shall include a process for coordinating the federal  
10 environmental impact statement process with the state  
11 environmental impact statement process, such that they run  
12 concurrently with each other and with the state and county  
13 permitting processes.

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

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

21 §201N-H Public hearing by coordinator. (a) If a federal,  
22 state, or county law requires a state or county agency to hold a



1 public hearing on a permit application before making a decision  
2 on the permit, the coordinator shall hold the public hearing in  
3 place of the state or county agency within the sixty-day period  
4 set forth in section 201N-E(a). To the extent practicable, the  
5 coordinator shall consolidate public hearings to cover all  
6 permit applications and required public hearings.

7 (b) Nothing in this section shall prevent a county agency  
8 from voluntarily holding a public hearing on a county permit  
9 after the coordinator submits to the county agency a  
10 recommendation on that permit pursuant to section 201N-F. If a  
11 county agency voluntarily holds a public hearing on a county  
12 permit, it shall do so within the forty-five-day period provided  
13 in section 201N-F(c) for review and action on the permit.

14 §201N-I Land use, zoning, building, and construction  
15 status of renewable energy facility; state and county permits.

16 (a) A renewable energy facility, and all necessary state and  
17 county permits that have been approved under this part, shall be  
18 deemed a permitted principal use on the land parcel upon which  
19 it is situated. The land use commission, department of land and  
20 natural resources, and the applicable county shall revise any  
21 state land use district map and county zoning map appropriately  
22 to reflect this status.



1           (b) The final plans and specifications of the renewable  
2 energy facility, as set forth in the relevant state and county  
3 permits approved pursuant to this part, shall be deemed to  
4 constitute the zoning, building, and construction standards for  
5 the facility and the land parcel upon which it is situated.

6           For the purpose of applicable state and county law:

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

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

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

20           §201N-J Environmental impact review process;

21 applicability. (a) Chapter 343 shall apply to any renewable



1 energy facility, a consolidated application for which shall be  
2 submitted to the coordinator under this part.

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

11 §201N-K Power purchase agreement not a state permit under  
12 this chapter; coordination of efforts. A power purchase  
13 agreement between a renewable energy facility owner and a public  
14 utility shall not be a permit subject to approval by the  
15 coordinator. Any power purchase agreement shall be subject to  
16 the applicable provisions of chapter 269. However, the  
17 coordinator shall establish and implement a system to coordinate  
18 and concurrently process the review and approval by the public  
19 utilities commission of any power purchase agreement for  
20 electricity generated by a renewable energy facility. The  
21 coordinator may convene an interagency working group for the  
22 purpose of this section.



1           §201N-L Building or grading permit required from county.  
2 A grading or building permit issued by the applicable county  
3 shall be required to grade a site or construct a structure for a  
4 renewable energy facility. The applicable county shall  
5 establish an expedited process for review and issuance of all  
6 required building or grading permits that shall not exceed  
7 ninety days; provided that the process allows the county to  
8 contract with a third party to conduct the review of the permit  
9 application and to require the applicant for the permit to pay  
10 the cost incurred for the third party review.

11           §201N-M 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 part 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 part shall not be grounds for  
4 any judicial appeal.

5           §201N-N Subdivision exemptions in existence on June 30,  
6 2020. (a) Any lease or easement (together with any mortgages  
7 or other documents encumbering either) that received a  
8 subdivision exemption that is in existence on June 30, 2020, may  
9 continue to be effective and shall continue to enjoy the  
10 exemption from subdivision requirements granted under section  
11 201N-O after that section is repealed on July 1, 2020; provided  
12 that the following restrictions are complied with:

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

20           (2) The lease shall have an initial term of at least  
21 twenty years.



1           (b) Notwithstanding that the leased land or easement area  
2 is not a lot of record, the lease or easement that received the  
3 subdivision exemption may be further encumbered, or any existing  
4 encumbrance may be amended, extended, or canceled, by  
5 recordation of a document in the bureau or the land court, as  
6 applicable, and the encumbrance shall only affect and encumber  
7 the leased land or easement area. Encumbrances shall be subject  
8 to applicable foreclosure laws, where applicable.

9           (c) The lease or easement may be transferred or assigned  
10 by recordation of a document in the bureau or the land court, as  
11 applicable; provided that the restrictions in subsection (a) are  
12 complied with and acknowledged by the transferee or assignee in  
13 any conveyance or assignment document.

14           (d) The term of the lease or easement may be extended, and  
15 the terms and conditions of the lease or easement may be amended  
16 or modified; provided that the restrictions in subsection (a)  
17 are complied with, and that any material change to the leased  
18 land or easement area shall be subject to subsection (e).

19           (e) Any material change after June 30, 2020, regarding the  
20 leased land or easement area shall be subject to subdivision  
21 requirements; provided that the county agency charged with  
22 administering subdivisions (for land within the agricultural



1 state land use district) or the department of land and natural  
2 resources (for land within the conservation state land use  
3 district) shall deem all subdivision requirements from which the  
4 lease or easement was exempt pursuant to the original  
5 subdivision exemption to be met and the lease or easement shall  
6 continue to be exempt from the requirements. The lease or  
7 easement shall only be subject to the additional subdivision  
8 requirements, if any, necessitated by the material change.

9 (f) For purposes of this section:

10 "Bureau" means the bureau of conveyances of the State of  
11 Hawaii.

12 "Land court" means the office of the assistant registrar of  
13 the land court of the State of Hawaii.

14 "Material change" means any change affecting the location,  
15 size, boundaries, or configuration of the leased land or the  
16 easement area that would require state or county review and  
17 approval under the subdivision requirements.

18 "Subdivision exemption" means the exemption to the  
19 subdivision requirements received pursuant to section 201N-0.

20 "Subdivision requirements" means all state laws or county  
21 ordinances and permits setting forth standards or requirements  
22 for improvements and approvals applicable to the subdivision or



1 consolidation of land, changes in legal boundaries, or the  
2 creation or consolidation of parcels, easements, or other  
3 interest in land.

4 §201N-0 Exemption from subdivision requirements. (a)

5 Notwithstanding any other law or ordinance to the contrary:

6 (1) Lands within the agricultural or conservation state  
7 land use district may be leased; and

8 (2) Easements may be created and granted over lands within  
9 the agricultural or conservation state land use  
10 district,

11 for the purpose of developing and financing a renewable energy  
12 project or accessing a renewable energy project that is a  
13 permitted use in the district, even if the leased land or  
14 easement area has not been subdivided as a separate subdivided  
15 lot or easement. Leases and easements authorized by this  
16 section shall be valid leases and easements for all purposes,  
17 but the exemption from subdivision requirements authorized by  
18 this section shall be subject to the requirements and  
19 limitations set forth in subsection (d).

20 (b) Without limiting the generality of subsection (a), the  
21 following may be performed without complying with subdivision  
22 requirements:



- 1           (1) All or a portion of a legal lot may be leased as a  
2           site for a renewable energy project or access to the  
3           project;
- 4           (2) Easements or other possessory interests, whether  
5           exclusive or nonexclusive, may be granted to use all  
6           or a portion of the legal lot as a renewable energy  
7           project site or access to the project;
- 8           (3) Maps, leases, licenses, grants of easements, or other  
9           instruments providing for the right to use all or a  
10          portion of a legal lot as delineated on a map for a  
11          renewable energy project site or access to the project  
12          may be recorded; and
- 13          (4) Mortgages and other security interests may be granted  
14          with respect to any lease or easement created pursuant  
15          to this section, and the holders of such mortgages or  
16          other security interests may foreclose upon the lease  
17          or easement covered and otherwise enforce the terms of  
18          the mortgage and security documents, subject to  
19          compliance with applicable laws other than subdivision  
20          requirements.
- 21          (c) The land court, bureau of conveyances, and other  
22          governmental agencies shall accept for filing and recording all



1 instruments and maps pertaining to leases, easements, mortgages,  
2 and other security documents authorized pursuant to this  
3 section.

4 (d) The exemption from subdivision requirements authorized  
5 by this section shall only apply to leases and easements that  
6 meet the following requirements and shall be subject to the  
7 following limitations:

8 (1) The lease or easement shall restrict the use of the  
9 leased land or easement area to the development and  
10 operation of a renewable energy project; provided  
11 that, to comply with section 205-4.6, agricultural  
12 uses and activities shall not be restricted by private  
13 agreement on agricultural land;

14 (2) The lease shall have an initial term of at least  
15 twenty years;

16 (3) With respect to leases and easements on lands within  
17 an agricultural state land use district, the exemption  
18 from subdivision requirements provided by this section  
19 shall be for:

20 (A) Solar energy facilities permitted under section  
21 205-2(d)(6), on land with soil classified by the  
22 land study bureau's detailed land classification



- 1 as overall (master) productivity rating class D  
2 or E;
- 3 (B) Wind energy facilities permitted under section  
4 205-2(d)(4) and (8), including the appurtenances  
5 associated with the production and transmission  
6 of wind-generated energy; and
- 7 (C) Any renewable energy facilities approved by the  
8 land use commission or county planning commission  
9 under chapter 205;
- 10 (4) With respect to leases and easements on lands within a  
11 conservation state land use district, the exemption  
12 from subdivision requirements provided by this section  
13 shall be for:
- 14 (A) Wind energy facilities, including the  
15 appurtenances associated with the production and  
16 transmission of wind-generated energy; and
- 17 (B) Any renewable energy facilities permitted or  
18 approved by the board of land and natural  
19 resources under chapter 183C; and
- 20 (5) The county agency charged with administering  
21 subdivisions in the county in which the renewable  
22 energy project is to be situated or, if the land is in



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

20 (e) Nothing in this section shall:

21 (1) Exempt the actual development, construction, or  
22 operation of any use, project, or improvement from any





1 applicable state or county laws, ordinances,  
2 restrictions, permits, or approvals, including  
3 restrictions on allowable uses or conditions and  
4 requirements for adequate infrastructure or mitigation  
5 measures;

6 (2) Exempt renewable energy projects from any permit or  
7 approval process under chapter 183C, 205, 205A, or  
8 343;

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

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

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



1           (1) Determine the type of renewable energy project that  
2                   may be allowed within an agricultural or conservation  
3                   district;

4           (2) Determine criteria for the appropriate siting of the  
5                   renewable energy project within an agricultural or  
6                   conservation district; and

7           (3) Identify mitigation measures applicable to renewable  
8                   energy projects to protect agricultural resources and  
9                   activities, the environment, natural resources,  
10                  cultural resources and activities, health, safety, and  
11                  welfare of the State.

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

15           (h) This section shall be repealed on July 1, 2020.

16           §201N-P Inapplicability of maximum time period rule  
17                  requirement. Section 91-13.5 shall not apply to the  
18                  coordinator. The deadlines for review and action upon a  
19                  consolidated application for a renewable energy facility shall  
20                  be subject to this part.

21           §201N-Q Rules. (a) No later than August 1, 2014, the  
22                  coordinator shall, after consultation with prospective



1 applicants and related governmental agencies as the coordinator  
2 deems necessary or advisable:

3 (1) Adopt a consolidated application form that is  
4 consistent with the streamlining and concurrent agency  
5 approval processing goals of this part; and

6 (2) Adopt interim rules to implement this part without  
7 regard to the notice and public hearing requirements  
8 of section 91-3 or the small business impact review  
9 requirements of chapter 201M.

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

12 §201N-R Superiority of chapter over conflicting state or  
13 county law. The provisions of this part shall supersede any  
14 conflicting state or county law."

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

17 "§91-1 Definitions. For the purpose of this chapter:

18 [~~1~~] "Agency" means each state or county board,  
19 commission, department, or officer authorized by law to make  
20 rules or to adjudicate contested cases, except those in the  
21 legislative or judicial branches.



1       "Agency hearing" refers only to a hearing held by an agency  
2 immediately prior to a judicial review of a contested case as  
3 provided in section 91-14.

4       "Contested case" means a proceeding in which the legal  
5 rights, duties, or privileges of specific parties are required  
6 by law to be determined after an opportunity for agency hearing.  
7 The term does not apply to the review, processing, or approval  
8 of state or county permits for any renewable energy facility  
9 under chapter 201N.

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

13       -(3)] "Party" means each person or agency named or admitted  
14 as a party, or properly seeking and entitled as of right to be  
15 admitted as a party, in any court or agency proceeding.

16       "Persons" includes individuals, partnerships, corporations,  
17 associations, or public or private organizations of any  
18 character other than agencies.

19       [-(4)] "Rule" means each agency statement of general or  
20 particular applicability and future effect that implements,  
21 interprets, or prescribes law or policy, or describes the  
22 organization, procedure, or practice requirements of any agency.



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

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

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

15 "(c) The rate payable by the public utility to the  
16 producer for the nonfossil fuel generated electricity supplied  
17 to the public utility shall be as agreed between the public  
18 utility and the supplier and as approved by the public utilities  
19 commission; provided that in the event the public utility and  
20 the supplier fail to reach an agreement for a rate, the rate  
21 shall be as prescribed by the public utilities commission  
22 according to the powers and procedures provided in this chapter.



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

14           When an application is submitted to the commission for the  
15 approval of a power purchase agreement or rate agreement for  
16 nonfossil fuel generated electricity between a renewable energy  
17 facility owner and a public utility under chapter 201N, the  
18 commission shall approve, approve with modification, or reject  
19 the application within sixty days of receipt. The commission's  
20 approval or approval with modification shall not be unreasonably  
21 withheld or delayed. If the commission does not approve,  
22 approve with modification, or reject the proposed power purchase



1 agreement or rate agreement within the sixty-day period, then  
2 the power purchase agreement and rate agreement as submitted  
3 shall be deemed approved on the first day following the sixty-  
4 day period.

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

17 For the purpose of this subsection:

18 (1) The sixty-day period for commission determinations  
19 shall be subject to extension by the commission for  
20 reasonable cause and for a reasonable time as  
21 necessary, but in no event later than the six-month  
22 deadline for processing of permits by the energy



1           resources coordinator referred to in section 201N-C;  
2           and  
3           (2) "Renewable energy facility owner" means the owner or  
4           authorized agent of the owner of a renewable energy  
5           facility as defined in section 201N-A."

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

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

11           SECTION 6. Section 343-5, Hawaii Revised Statutes, is  
12 amended by amending subsection (e) to read as follows:

13           "(e) Whenever an applicant proposes an action specified by  
14 subsection (a) that requires approval of an agency and that is  
15 not a specific type of action declared exempt under section 343-  
16 6, the agency initially receiving and agreeing to process the  
17 request for approval shall require the applicant to prepare an  
18 environmental assessment of the proposed action at the earliest  
19 practicable time to determine whether an environmental impact  
20 statement shall be required; provided that if the agency  
21 determines, through its judgment and experience, that an  
22 environmental impact statement is likely to be required, the





1 agency may authorize the applicant to choose not to prepare an  
2 environmental assessment and instead prepare an environmental  
3 impact statement that begins with the preparation of an  
4 environmental impact statement preparation notice as provided by  
5 rules. For an action that proposes the establishment of a  
6 renewable energy facility, at the renewable energy facility  
7 applicant's written request, a draft environmental impact  
8 statement shall be prepared at the earliest practicable time[-]  
9 without the need to first prepare an environmental assessment.  
10 The final approving agency for the request for approval is not  
11 required to be the accepting authority.

12 For environmental assessments for which a finding of no  
13 significant impact is anticipated:

- 14 (1) A draft environmental assessment shall be made  
15 available for public review and comment for a period  
16 of thirty days;
- 17 (2) The office shall inform the public of the availability  
18 of the draft environmental assessment for public  
19 review and comment pursuant to section 343-3; and
- 20 (3) The applicant shall respond in writing to comments  
21 received during the review and the applicant shall  
22 prepare a final environmental assessment to determine



1           whether an environmental impact statement shall be  
2           required. A statement shall be required if the agency  
3           finds that the proposed action may have a significant  
4           effect on the environment. The agency shall file  
5           notice of the agency's determination with the office,  
6           which, in turn, shall publish the agency's  
7           determination for the public's information pursuant to  
8           section 343-3.

9           The draft and final statements, if required, shall be  
10          prepared by the applicant, who shall file these statements with  
11          the office.

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

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

21          The authority to accept a final statement shall rest with  
22          the agency initially receiving and agreeing to process the



1 request for approval. The final decision-making body or  
2 approving agency for the request for approval is not required to  
3 be the accepting authority. The planning department for the  
4 county in which the proposed action will occur shall be a  
5 permissible accepting authority for the final statement. For a  
6 renewable energy facility, the energy resources coordinator  
7 under chapter 201N shall be the accepting authority.

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

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



1 request of the applicant for a period not to exceed fifteen  
2 days.

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

14 SECTION 7. Chapter 201N, part I, Hawaii Revised Statutes,  
15 is repealed.

16 SECTION 8. If a prospective developer of a renewable  
17 energy facility has submitted an application for a state or  
18 county permit necessary for the siting, development,  
19 construction, or operation of the facility before July 1, 2014,  
20 the prospective developer may:



- 1           (1) Request the relevant state or county agency to proceed  
2           with reviewing, processing, and acting upon the permit  
3           application; or
- 4           (2) Withdraw the permit application and submit a  
5           consolidated application to the energy resources  
6           coordinator pursuant to part of chapter 201N, Hawaii  
7           Revised Statutes, established by section 2 of this  
8           Act; provided that if the prospective developer  
9           chooses to submit a consolidated application, the  
10          relevant state or county agency shall transmit to the  
11          coordinator all documents applicable to the withdrawn  
12          permit application, except those that the agency finds  
13          are internal work product that may expose the agency  
14          to liability if released.

15          If the prospective developer has submitted two or more  
16          permit applications with state or county agencies before July 1,  
17          2014, the prospective developer may select the action under  
18          paragraph (1) for some applications and the action under  
19          paragraph (2) for other applications.

20          A draft or final environmental impact statement under  
21          preparation by a prospective developer for a state or county  
22          permit application submitted before July 1, 2014, may be used



1 for a consolidated application submitted to the coordinator.  
 2 The prospective developer shall not be required to begin the  
 3 environmental impact statement process anew if withdrawing the  
 4 permit application and submitting a consolidated application.

5 SECTION 9. There is appropriated out of the general  
 6 revenues of the State of Hawaii the sum of \$ or so  
 7 much thereof as may be necessary for fiscal year 2014-2015 for  
 8 the establishment and operation of the renewable energy facility  
 9 siting process established under this Act.

10 The sum appropriated shall be expended by the department of  
 11 business, economic development, and tourism for the purposes of  
 12 this Act.

13 SECTION 10. In codifying the new sections added by section  
 14 2 of this Act, the revisor of statutes shall substitute  
 15 appropriate section numbers for the letters used in designating  
 16 the new sections in this Act.

17 SECTION 11. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect on July 1, 2014.

20

INTRODUCED BY:  \_\_\_\_\_

# H.B. NO. 1584

**Report Title:**

Construction Industry Task Force; 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.*

