

**[CHAPTER 196D  
GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT]**

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### **Note**

Consultation and input from Native Hawaiian community and general public when developing geothermal energy resources with public land trust lands. L 2012, c 193, §2.

### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### **Case Notes**

Government enjoined from further participation in geothermal energy project until completion of environmental impact statement. 767 F. Supp. 1518; see also 754 F. Supp. 1450.

" **[\$196D-1] Short title.** This chapter shall be known and may be cited as the Geothermal and Cable System Development Permitting Act of 1988. [L 1988, c 301, pt of §1]

" **[\$196D-2] Findings and declaration of purpose.** The legislature hereby finds and declares that:

- (1) The development of Hawaii's geothermal resources, which are located principally on the island of Hawaii and possibly on the island of Maui, represents a substantial and long-term source of indigenous renewable alternate energy that could be used to generate electric energy to meet the State's electric energy needs and concurrently help to reduce the State's need for imported fossil fuels;
- (2) The State has deemed it appropriate that the private sector should develop these geothermal resources, and, to that end, has sought to encourage private sector exploration and development of geothermal resources;
- (3) The private sector companies seeking to develop geothermal resources are, however, unable or unwilling to expend the substantial amounts of funds needed to develop these resources to their full extent without an assured and sufficiently large market for the electric energy to be generated therefrom, and the present and projected electric energy demand on the island of Hawaii does not provide an assured and sufficiently large market;
- (4) The greatest present and projected demand for geothermally generated electric energy is located on the island of Oahu;

- (5) The State, with the support and assistance of the federal and county of Hawaii governments, has been exploring for several years the technical, engineering, economic, and financial feasibility of an interisland deep water electrical transmission cable system that would be capable of transmitting geothermally generated electric energy from the island of Hawaii to the islands of Maui and Oahu, and believes that a cable system may be feasible and desirable;
- (6) The development of such a cable system will not be undertaken without the firm assurance that a sufficient amount of geothermally generated electric energy will be continuously available to be transmitted through a cable system once it becomes operational;
- (7) The fundamental interrelationship between the development of geothermal resources and a cable system and the magnitude of the cost to undertake each of these developments clearly indicate that neither will be undertaken without the firm assurance that the other also will be undertaken in a synchronized and coordinated manner to enable both developments in substance to be completed concurrently, thereby ensuring that revenues will be available to begin amortizing the costs of each of these developments;
- (8) A major and fundamental difficulty in the development of both geothermal resources and a cable system is the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that currently control the undertaking of all commercial projects in the State;
- (9) These controls attempt to ensure that commercial development projects in general are undertaken in a manner consistent with land use, planning, environmental, and other public policies, except that some of these specific laws, regulations, and controls may be repetitive, duplicative, and uncoordinated;
- (10) To a limited extent, the State and counties have sought to ameliorate this difficulty through the enactment or adoption of measures to improve the coordination and efficiency of land use and planning controls and specifically to facilitate the development of geothermal resources;
- (11) Notwithstanding these efforts, the complexities, the magnitude in scope and cost, the fundamental interrelationship between the development of

- geothermal resources and a cable system, the inherent requirement for the coordinated development of the geothermal resources and a cable system, the substantial length of time required to undertake and complete both developments, and the desirability of private funding for both developments require that affected state and county agencies be directed to pursue and develop to the maximum extent under existing law the coordination and consolidation of regulations and controls pertinent to the development of geothermal resources and a cable system;
- (12) The development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State;
- (13) Because of the complexities of both projects, there is a need to develop a consolidated permit application and review process to provide for and facilitate the firm assurances that companies will require before committing the substantial amounts of funds, time, and effort necessary to undertake these developments, while at the same time ensuring the fulfillment of fundamental state and county land use and planning policies;
- (14) The development of geothermal resources and a cable system are in furtherance of the State's policies, as expressed in the state plan and elsewhere, to develop the State's indigenous renewable alternate energy resources and to decrease the State's dependency on imported fossil fuels; and
- (15) A consolidated permit application and review process for the development of the State's geothermal resources and the cable system should be established by an act of the legislature. [L 1988, c 301, pt of §1]

" **[§196D-3] Definitions.** As used in this chapter unless the context clearly requires otherwise:

"Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of the project.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit of the proposed project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of the project.

"Department" means the department of land and natural resources or any successor agency.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental impact statement" means, as applicable, an informational document prepared in compliance with chapter 343 or with the National Environmental Policy Act of 1969 (Public Law 91-190).

"Interagency group" means the body established pursuant to section 196D-6.

"Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State and which is required prior to or in connection with the undertaking of the project.

"Person" includes any individual, partnership, firm, association, trust, estate, corporation, joint venture, consortium, any public corporation or authority that may be established by the legislature for the purposes of the project, or other legal entity other than an agency.

"Project" means the commercial development, construction, installation, financing, operation, maintenance, repair, and replacement, including without limitation all applicable exploratory, testing, and predevelopment activities related to the foregoing of:

- (1) A geothermal power plant or plants, including all associated equipment, facilities, wells, and transmission lines, on the island of Hawaii for the purpose of generating electric energy for transmission primarily to the island of Oahu through the cable system; and
- (2) An interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the island of Hawaii to the island of Oahu, regardless of whether the cable system is used to deliver electric energy to any intervening point. [L 1988, c 301, pt of §1]

" **[\$196D-4] Consolidated permit application and review process.** (a) The department is designated as the lead agency

for the purposes of this chapter and, in addition to its existing functions, shall establish and administer the consolidated permit application and review process provided for in this chapter, which shall incorporate the permitting functions of those agencies involved in the development of the project which are transferred by section 196D-10 to the department to effectuate the purposes of this chapter.

(b) The consolidated permit application and review process shall incorporate:

- (1) A list of all permits required for the project;
- (2) The role and functions of the department as the lead agency and the interagency group;
- (3) All permit review and approval deadlines;
- (4) A schedule for meetings and actions of the interagency group;
- (5) A mechanism to resolve any conflicts that may arise between or among the department and any other agencies, including any federal agencies, as a result of conflicting permit, approval, or other requirements, procedures, or agency perspectives;
- (6) Any other administrative procedures related to the foregoing; and
- (7) A consolidated permit application form to be used for the project for all permitting purposes.

(c) The department shall perform all of the permitting functions for which it is currently responsible and which are transferred to it by section 196D-10 for the purposes of the project, and shall coordinate and consolidate all required permit reviews by other agencies, and to the fullest extent possible by all federal agencies, having jurisdiction over any aspect of the project. [L 1988, c 301, pt of §1]

**" §196D-5 Consolidated permit application and review**

**procedure.** (a) The department shall serve as the lead agency for the consolidated permit application and review process established pursuant to section 196D-4(b) and as set forth in this section for the project. All agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project are required to participate in the consolidated permit application and review process.

(b) To the greatest extent possible, the department and each agency whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project shall complete all of their respective permitting functions for the purposes of the project, in accordance with the timetable for regulatory review set forth in the joint

agreement described in subsection (c) (3) and within the time limits contained in the applicable permit statutes, ordinances, regulations, or rules; except that the department or any agency shall have good cause to extend, if and as permitted, the applicable time limit if the permit-issuing agency must rely on another agency, including any federal agency, for all or part of the permit processing and the delay is caused by the other agency.

- (c) The procedure shall be as follows:
  - (1) The applicant shall submit the consolidated permit application using the consolidated permit application form, which shall include whatever data about the proposed project that the department deems necessary to fulfill the purposes of this chapter and to determine which other agencies may have jurisdiction over any aspect of the proposed project.
  - (2) Upon receipt of the consolidated permit application, the department shall notify all agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project, as well as all federal agencies, that the department determines may have jurisdiction over any aspect of the proposed project as set forth in the application, and shall invite the federal agencies so notified to participate in the consolidated permit application process. The agencies, and those federal agencies that accept the invitation, thereafter shall participate in the consolidated permit application and review process.
  - (3) The representatives of the department and the state, county, and federal agencies and the applicant shall develop and sign a joint agreement among themselves which shall:
    - (A) Identify the members of the consolidated permit application and review team;
    - (B) Identify all permits required for the project;
    - (C) Specify the regulatory and review responsibilities of the department and each state, county, and federal agency and set forth the responsibilities of the applicant;
    - (D) Establish a timetable for regulatory review, the conduct of necessary hearings, the preparation of an environmental impact statement if necessary, and other actions required to minimize duplication and to coordinate and consolidate the activities of the applicant, the department, and the state, county, and federal agencies; and

- (E) Provide that a hearing required for a permit shall be held on the island where the proposed activity shall occur.
  - (4) A consolidated permit application and review team shall be established and shall consist of the members of the interagency group established pursuant to section 196D-6(a). The applicant shall designate its representative to be available to the review team, as it may require, for purposes of processing the applicant's consolidated permit application.
  - (5) The department and each agency whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based upon its own jurisdiction. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the department for the purposes of the project.
  - (6) The applicant shall apply directly to each federal agency that does not participate in the consolidated permit application and review process.
  - (7) The department shall review for completeness and thereafter shall process the consolidated permit application submitted by an applicant for the project, and shall monitor the processing of permit application by those agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project. The department shall coordinate, and seek to consolidate where possible, the permitting functions and shall monitor and assist in the permitting functions conducted by all of these agencies, and to the fullest extent possible the federal agencies, in accordance with the consolidated permit application and review process.
  - (8) Once the processing of the consolidated permit application has been completed and the permits requested have been issued to the applicant, the department shall monitor the applicant's work undertaken pursuant to the permits to ensure the applicant's compliance with the terms and conditions of the permits.
- (d) Where the contested case provisions under chapter 91 apply to any one or more of the permits to be issued by the agency for the purposes of the project, the agency, if there is



a contested case involving any of the permits, may be required to conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the intermediate appellate court, subject to chapter 602. [L 1988, c 301, pt of §1; am L 2004, c 202, §15; am L 2006, c 94, §1; am L 2010, c 109, §1]

#### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$196D-6] Interagency group.** (a) The department shall establish an interagency group comprised of those agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project and which have jurisdiction over any aspect of the project. Each of these agencies shall designate an appropriate representative to serve on the interagency group as part of the representative's official responsibilities. The interagency group shall perform liaison and assisting functions as required by this chapter and the department. The department shall invite and encourage the appropriate federal agencies having jurisdiction over any aspect of the project to participate in the interagency group.

(b) The department and agencies shall cooperate with the federal agencies to the fullest extent possible to minimize duplication between and, where possible, promote consolidation of federal and state requirements. To the fullest extent possible, this cooperation shall include, among other things, joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with state law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling their requirements so that all documents shall comply with all applicable laws.

(c) If the legislature establishes any public corporation or authority for the purposes of the project, then upon its establishment, the public corporation or authority shall be a member of the interagency group. [L 1988, c 301, pt of §1]

" **[\$196D-7] Streamlining activities.** In administering the consolidated permit application and review process, the department shall:

- (1) Monitor all permit applications submitted under this chapter and the processing thereof on an ongoing basis to determine the source of any inefficiencies, delays, and duplications encountered and the status of all permits in process;
- (2) Adopt and implement needed streamlining measures identified by the interagency group, in consultation with those agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project and with members of the public;
- (3) Design, in addition to the consolidated permit application form, other applications, checklists, and forms essential to the implementation of the consolidated permit application and review process;
- (4) Recommend to the legislature, as appropriate, suggested changes to existing laws to eliminate any duplicative or redundant permit requirements;
- (5) Coordinate with agencies to ensure that all standards used in any agency decisionmaking for any required permits are clear, explicit, and precise; and
- (6) Incorporate, where possible, rebuttable presumptions based upon requirements met for permits issued previously under the consolidated permit application and review process. [L 1988, c 301, pt of §1]

" **[§196D-8] Information services.** The department shall:

- (1) Operate a permit information and coordination center during normal working hours, which will provide guidance to potential applicants for the project with regard to the permits and procedures that may apply to the project; and
- (2) Maintain and update a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred by section 196D-10 to the department for the purposes of the project and which have control or regulatory power over any aspect of the project and of federal agencies having jurisdiction over any aspect of the project. [L 1988, c 301, pt of §1]

" **[§196D-9] Construction of the chapter; rules.** This chapter shall be construed liberally to effectuate its purposes, and the department shall have all powers which may be necessary to carry out the purposes of this chapter, including the authority to make, amend, and repeal rules to implement this chapter; provided that all procedures for public information and

review under chapter 91 shall be preserved; and provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law. The adoption, amendment, and repeal of all rules shall be subject to chapter 91. [L 1988, c 301, pt of §1]

#### **Revision Note**

In title, "chapter" substituted for "Act".

" **[\$196D-10] Transfer of functions.** (a) Those functions identified in paragraphs (1) and (2) insofar as they relate to the permit application, review, processing, issuance, and monitoring of laws, and rules and to the enforcement of terms, conditions, and stipulations of permits and other authorizations issued by agencies with respect to the development, construction, installation, operation, maintenance, repair, and replacement of the project, or any portion or portions thereof, are transferred to the department. With respect to each of the statutory authorities cited in paragraphs (1) and (2), the transferred functions include all enforcement functions of the agencies or their officials under the statute cited as may be related to the enforcement of the terms, conditions, and stipulations of permits, including but not limited to the specific sections of the statute cited. "Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

- (1) Such functions of the land use commission related to: district boundary amendments as set forth in section 205-3.1 et seq.; and changes in zoning as set forth in section 205-5; and
- (2) The permit approval and enforcement functions of the director of transportation or other appropriate official or entity in the department of transportation related to permits or approvals issued for the use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266.

(b) Nothing in this section shall be construed to relieve an applicant from the laws, ordinances, and rules of any agency whose functions are not transferred by this section to the department for the purposes of the project.

(c) This section shall not apply to any permit issued by the public utilities commission under chapter 269.

(d) Notwithstanding any other provision of this chapter, this section shall take effect on July 1, 1989. [L 1988, c 301, pt of §1]

#### **Note**

"July 1, 1989" substituted for "a date that is one year after the effective date of this chapter".

" **[\$196D-11] Annual report.** The department shall submit an annual report to the governor and the legislature on its work during the preceding year, the development status of the project, any problems encountered, and any legislative actions that may be needed further to improve the consolidated permit application and review process and implement the intent of this chapter. [L 1988, c 301, pt of §1]

" **[\$196D-12] Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable. [L 1988, c 301, pt of §1]

" **§196D-13 Exemptions from certain state laws.** In order to promote the purposes of this chapter, all persons hired by the department to effectuate this chapter are excepted from chapters 76 and 89. [L 1988, c 301, pt of §1; am L 2002, c 148, §18]

" **[\$196D-14] Development of geothermal resources on Maui.** To the extent an applicant's proposed project includes the development of geothermal resources on the island of Maui and the delivery of electric energy generated from these resources to the island of Oahu through the cable system, this chapter shall apply to that proposed project. [L 1988, c 301, pt of §1]