THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

S.B. NO. 2510

JAN 18 2008

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

SECTION 1. The purpose of this Act is to establish a renewable energy facility siting process for state and county permits necessary for the siting, development, construction, and operation of a renewable energy facility.

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

"CHAPTER

RENEWABLE ENERGY FACILITY SITING PROCESS

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

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

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

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

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

"Permit":

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

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

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

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

(2) Includes:

(A) A state land use reclassification;

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

(C) A county zoning map amendment;

(D) A state conservation district use permit;

(E) A state special permit for an agricultural or rural district;

(F) A special management area permit;

(G) A shoreline setback variance; and

(H) A grant of an easement on state or county real property.

"Power purchase agreement" means an agreement between a renewable energy facility owner and a public utility on the rate payable by the public utility for renewable energy generated electricity produced by the facility.

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

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

(1) The land parcel on which the facility is situated;

(2) Any renewable energy production structure or equipment;

(3) Any energy transmission line from the facility to a public utility's electricity distribution system;

(4) Any on-site infrastructure; and

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

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

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

"State permit" means a permit that is subject to the approval of a state agency pursuant to federal or state law.

§ -2 Staff and contractor; energy resources coordinator for renewable energy facility siting process. (a) The energy resources coordinator may employ and dismiss staff without regard to chapters 76 and 89 to assist the coordinator in the implementation of this chapter. The salary of each staff member shall be set by the coordinator. Each staff member shall be entitled to participate in any public employee benefit program plan or privilege.

The coordinator may also contract persons to assist the coordinator in the implementation of this chapter.

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

(1) Accept a consolidated application, in a form as the coordinator shall prescribe, for the approval of the siting, development, construction, and operation of a renewable energy facility;

(2) Identify all state and county permits necessary for approval of the renewable energy facility;

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

(4) Work with other federal, state, and county agencies and the applicant to determine the terms and conditions of the permits that are necessary to effectuate this chapter and to protect the public health and safety and promote the general welfare.

§ -4 **Consolidated application; fee; pre-application conference; public notice of receipt of application.** (a) The coordinator shall establish a consolidated application and require the applicant to pay a fee with the consolidated application. The coordinator shall set the fee at an amount

1 sufficient to cover the costs and expenses of the coordinator,
2 coordinator's staff and contractor, and relevant state and
3 county agencies to provide input and advice on the state and
4 county permits necessary for the facility. Upon collection of
5 the fee or periodically thereafter, the coordinator shall
6 transmit to each relevant state or county agency the portion of
7 the fee that reflects the cost to that state or county agency
8 for providing its input and advice.
9 (b) Before accepting a consolidated application, the
10 coordinator may hold a pre-application conference with the
11 prospective applicant to discuss all the state and county
12 permits necessary for the facility and notify the prospective
13 applicant of the information to submit with the consolidated
14 application.
15 (c) Within ten days of receipt of a consolidated
16 application, the coordinator shall publish a public notice of
17 receipt of the application in a statewide publication. The
18 public notice shall include:
19 (1) The name of the applicant;
20 (2) The location of the proposed renewable energy
21 facility;
22 (3) A summarized description of the facility;

(4) The state and county permits required for the facility; and

(5) Any other information deemed necessary or desirable by the coordinator.

§ -5 **Approval of state permits.** (a) When the coordinator receives an application for a renewable energy facility that requires state permits, the coordinator, after consultation with relevant federal, state, and county agencies, shall determine the terms and conditions to be imposed on the state permits to protect the public health and safety and promote the general welfare. The terms and conditions may require the applicant to improve off-site infrastructure or establish measures to mitigate significant adverse environmental effects.

The coordinator shall make the determination for all terms and conditions of all required state permits no later than sixty days after the public has been informed pursuant to section 343-3 of the acceptance of the final environmental impact statement for the facility; provided that, if an approval for a federal permit is a prerequisite to the approval of a state permit required for the facility, the coordinator shall not make any determination until the federal permit is approved.

1 (b) Upon determining the necessary terms and conditions
2 under subsection (a), the coordinator, on behalf of the relevant
3 state agencies, shall approve the permits with those terms and
4 conditions. The approval shall take effect on the sixty-first
5 day after the public has been informed pursuant to section 343-3
6 of the acceptance of the final environmental impact statement
7 for the facility. If, however, a judicial proceeding has been
8 timely brought under section 343-7(c) regarding the acceptance
9 of the statement, the permits shall be subject to the order
10 entered with the final judicial decision on the dispute. The
11 coordinator may publish the coordinator's approval of all state
12 permits in one consolidated document.
13 If a statement of finding is required by state law as a
14 condition for approval of a state permit, the coordinator shall
15 issue the statement to accompany the permit. For the purpose of
16 this chapter, a statement of finding shall be deemed a
17 "condition" of the state permit.
18 (c) Notwithstanding the approval of a state permit by the
19 coordinator, the state agency on whose behalf the permit was
20 approved shall be responsible for monitoring and enforcing the
21 terms and conditions of the permit.

1 **§ -6 Recommendation for approval of county permits;**
2 **approval of county permits.** (a) When the coordinator receives
3 an application for a renewable energy facility that requires
4 county permits, the coordinator, after consultation with
5 relevant federal, state, and county agencies, shall determine
6 the terms and conditions to be imposed on the county permits to
7 protect the public health and safety and promote the general
8 welfare. The terms and conditions may require the applicant to
9 improve off-site infrastructure or establish measures to
10 mitigate significant adverse environmental effects.
11 The coordinator shall make the determination for all county
12 permits at the same time the determination is made for state
13 permits under section -5.
14 (b) Upon determining the necessary terms and conditions
15 under subsection (a), the coordinator shall recommend to the
16 relevant county agencies that they approve the county permits
17 with those terms and conditions.
18 If a statement of findings is required by county law as a
19 condition for approval of a particular county permit, the
20 coordinator shall issue the statement to accompany the permit.
21 For the purpose of this chapter, a statement of findings shall
22 be deemed a "condition" of the county permit.

1 (c) Within forty-five days of receipt of the
2 recommendation from the coordinator, each relevant county agency
3 may approve the county permit under its jurisdiction with the
4 terms and conditions recommended by the coordinator or amended
5 by the county agency. The county agency may charge the
6 applicant a fee for reviewing and acting on the permit.
7 (d) If, within forty-five days of receipt of a
8 recommendation from the coordinator, a county agency does not
9 approve the permit, either because of rejection or inaction, the
10 permit with the terms and conditions recommended by the
11 coordinator shall be deemed approved on the forty-sixth day
12 without necessity of further action by the county agency or
13 coordinator.
14 (e) If, within the forty-five-day period, the county
15 agency approves the 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 recommended terms and conditions in accordance with subsection
2 (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. If the coordinator rejects
9 all or some of the amended terms and conditions, the coordinator
10 shall approve the county permit with terms and conditions that
11 exclude the rejected amendments. The coordinator shall issue
12 the decision in writing. If the coordinator does not issue a
13 written decision within the ten-day period, the county permit
14 with terms and conditions as amended by the county agency shall
15 be deemed approved on the eleventh day without necessity of
16 further action by the county agency or coordinator.
17 (f) Notwithstanding the action by the coordinator on a
18 county permit approved pursuant to this subsection, the relevant
19 county agency shall be responsible for monitoring and enforcing
20 the terms and conditions of the permit.
21 **§ -7 Coordination with federal permits.** The coordinator
22 shall establish and implement a system to coordinate the

1 approval of required federal permits with state and county
2 permits. The system shall include a process for coordinating
3 the federal environmental impact statement process with the
4 state environmental impact statement process. The coordinator
5 may convene an interagency working group for this purpose.
6 § -8 **Public hearing by coordinator.** (a) If a federal,
7 state, or county law requires a state or county agency to hold a
8 public hearing on a permit application before making a decision
9 on the permit, the coordinator shall hold the public hearing in
10 place of the state or county agency; provided that the state or
11 county agency shall not be required to hold the public hearing
12 unless required to do so by federal law. To the extent
13 practicable, the coordinator shall hold one consolidated public
14 hearing to cover all permit applications and required public
15 hearings.
16 (b) Nothing in this section shall prevent a county agency
17 from voluntarily holding a public hearing on a county permit
18 after the coordinator submits to the county agency a
19 recommendation on that permit pursuant to section -6. If a
20 county agency voluntarily holds a public hearing on a county
21 permit, it shall do so within the forty-five-day period provided
22 for review and action on the permit.

1 **§ -9 Land use, zoning, building, and construction status**
2 **of renewable energy facility; state and county permits.** (a) A
3 renewable energy facility, all necessary state and county
4 permits for which have been approved under this chapter, shall
5 be deemed a permitted principal use on the land parcel upon
6 which it is situated. The land use commission, department of
7 land and natural resources, and the relevant county shall revise
8 any state land use district map and county zoning map
9 appropriately to reflect this status.
10 (b) The final plans and specifications of the renewable
11 energy facility, as set forth in the relevant state and county
12 permits approved pursuant to this chapter, shall be deemed to
13 constitute the zoning, building, and construction standards for
14 the facility and the land parcel upon which it is situated.
15 For the purpose of applicable state and county law:
16 (1) The facility shall be deemed a conforming use; and
17 (2) Any building or structure associated with or related
18 to a facility shall be deemed a conforming building or
19 structure.
20 (c) Nothing in this section shall be deemed to prohibit
21 the amendment of the state land use classification, county
22 zoning map, or other zoning, building, or construction standard

with respect to facilities approved under this chapter. Any amendment, if made, shall be accomplished in accordance with applicable state or county law; except that no amendment shall remove the conforming status conferred under subsection (b) with respect to any facility or any associated building or structure.

§ -10 Environmental impact review process; applicability. (a) Chapter 343 shall apply to any renewable energy facility, a consolidated application for which is submitted to the coordinator under this chapter.

(b) Nothing in this chapter or chapter 343 shall prohibit the review and processing by the coordinator of applications for permits for a renewable energy facility concurrently with the preparation and processing by the applicant of an environmental impact statement for the facility. To accomplish the concurrent review, the coordinator may consent to the receipt and review of portions of a draft of an environmental impact statement before its completion.

§ -11 Power purchase agreement; inapplicability of chapter. A power purchase agreement between a renewable energy facility owner and a public utility shall not be a "permit" subject to approval by the coordinator. Any power purchase

1 agreement shall be subject to the applicable provisions of
2 chapter 269.
3 **§ -12 Building or grading permit required from county.**
4 A grading or building permit issued by the applicable county
5 shall be required to grade a site or construct a structure for a
6 renewable energy facility. The applicable county shall
7 establish an expedited process for review and issuance of all
8 required building or grading permits. Under the process, the
9 county may contract with a third party to conduct the review of
10 the permit application and require the applicant for the permit
11 to pay the cost incurred for the third party review.
12 **§ -13 Judicial review of dispute regarding approved**
13 **permit; inapplicability of contested case procedures.** (a) Any
14 person aggrieved by the approval of a state or county permit or
15 term or condition of any approved permit may file an action for
16 relief in the circuit court.
17 (b) The inapplicability of the use of contested case
18 procedures pursuant to chapter 91 in the approval of any state
19 or county permit pursuant to this chapter shall not be grounds
20 for any judicial appeal.
21 **§ -14 Inapplicability of maximum time period rule**
22 **requirement.** Section 91-13.5 shall not apply to the

coordinator. The deadlines for review and action upon a consolidated application for a renewable energy facility shall be subject to this chapter.

§ -15 Rules. (a) The coordinator may adopt interim rules to implement this chapter without regard to the notice and public hearing requirements of section 91-3 or the small business impact review requirements of chapter 201M.

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

§ -16 Superiority of chapter over conflicting state or county law. The provisions of this chapter shall supersede any conflicting state or county law."

SECTION 3. Section 91-1, Hawaii Revised Statutes, is amended by amending the definition of "contested case" to read as follows:

"(5) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. <u>The term does not apply to the review, processing, or approval of state or county permits for any renewable energy facility under chapter .</u>"

1 SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) The rate payable by the public utility to the
4 producer for the nonfossil fuel generated electricity supplied
5 to the public utility shall be as agreed between the public
6 utility and the supplier and as approved by the public utilities
7 commission; provided that in the event the public utility and
8 the supplier fail to reach an agreement for a rate, the rate
9 shall be as prescribed by the public utilities commission
10 according to the powers and procedures provided in this chapter.
11 In the exercise of its authority to determine the just and
12 reasonable rate for the nonfossil fuel generated electricity
13 supplied to the public utility by the producer, the commission
14 shall establish that the rate for purchase of electricity by a
15 public utility shall not be more than one hundred per cent of
16 the cost avoided by the utility when the utility purchases the
17 electrical energy rather than producing the electrical energy.
18 The commission's determination of the just and reasonable
19 rate shall be accomplished by establishing a methodology that
20 removes or significantly reduces any linkage between the price
21 of fossil fuels and the rate for the nonfossil fuel generated
22 electricity to potentially enable utility customers to share in

1 the benefits of fuel cost savings resulting from the use of
2 nonfossil fuel generated electricity. As the commission deems
3 appropriate, the just and reasonable rate for nonfossil fuel
4 generated electricity supplied to the public utility by the
5 producer may include mechanisms for reasonable and appropriate
6 incremental adjustments, such as adjustments linked to consumer
7 price indices for inflation or other acceptable adjustment
8 mechanisms.
9 When an application is submitted to the commission for the
10 approval of a rate agreement for nonfossil fuel generated
11 electricity between a renewable energy facility owner and a
12 public utility under chapter , the commission shall approve,
13 approve with modification, or reject the application within
14 thirty days of receipt. If the commission does not approve,
15 approve with modification, or reject the proposed rate agreement
16 within the thirty-day period, the rate agreement as submitted
17 shall be deemed approved on the thirty-first day.
18 When a renewable energy facility owner and a public utility
19 fail to reach an agreement on the rate payable for nonfossil
20 fuel generated electricity, either party may request the
21 commission to prescribe a just and reasonable rate. The
22 commission shall prescribe the rate within thirty days of

1 receipt of the request. If the commission does not prescribe
2 the rate within the thirty-day period, the rate last proposed by
3 the renewable energy facility owner shall be deemed the rate
4 prescribed. That rate shall be effective on the first day after
5 the thirty-day period.
6 For the purpose of this section, "renewable energy facility
7 owner" means the owner or authorized agent of the owner of a
8 renewable energy facility as defined in section -1."
9 SECTION 5. Section 343-2, Hawaii Revised Statutes, is
10 amended by adding a new definition of "renewable energy
11 facility" to be appropriately inserted and to read as follows:
12 ""Renewable energy facility" has the same meaning as
13 defined in section -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

required[~~.~~]; provided that, for an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

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

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;

(3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment.

The agency shall file notice of the agency's determination with the office, which, in turn, shall

1 publish the agency's determination for the public's
2 information pursuant to section 343-3.
3 The draft and final statements, if required, shall be
4 prepared by the applicant, who shall file these statements with
5 the office.
6 The draft statement shall be made available for public
7 review and comment through the office for a period of forty-five
8 days. The office shall inform the public of the availability of
9 the draft statement for public review and comment pursuant to
10 section 343-3.
11 The applicant shall respond in writing to comments received
12 during the review and prepare a final statement. The office,
13 when requested by the applicant or agency, may make a
14 recommendation as to the acceptability of the final statement.
15 The authority to accept a final statement shall rest with
16 the agency initially receiving and agreeing to process the
17 request for approval. The final decision-making body or
18 approving agency for the request for approval is not required to
19 be the accepting authority. The planning department for the
20 county in which the proposed action will occur shall be a
21 permissible accepting authority for the final statement. For a

1 renewable energy facility, the energy resources coordinator
2 under chapter shall be the accepting authority.
3 Acceptance of a required final statement shall be a
4 condition precedent to approval of the request and commencement
5 of the proposed action. Upon acceptance or nonacceptance of the
6 final statement, the agency shall file notice of such
7 determination with the office. The office, in turn, shall
8 publish the determination of acceptance or nonacceptance of the
9 final statement pursuant to section 343-3.
10 The agency receiving the request, within thirty days of
11 receipt of the final statement, shall notify the applicant and
12 the office of the acceptance or nonacceptance of the final
13 statement. The final statement shall be deemed to be accepted
14 if the agency fails to accept or not accept the final statement
15 within thirty days after receipt of the final statement;
16 provided that the thirty-day period may be extended at the
17 request of the applicant for a period not to exceed fifteen
18 days.
19 In any acceptance or nonacceptance, the agency shall
20 provide the applicant with the specific findings and reasons for
21 its determination. An applicant, within sixty days after
22 nonacceptance of a final statement by an agency, may appeal the

nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

SECTION 7. Chapter 196D, Hawaii Revised Statutes, is repealed.

SECTION 8. If a prospective developer of a renewable energy facility has submitted an application for a state or county permit necessary for the siting, development, construction, or operation of the facility before July 1, 2008, the prospective developer may:

(1) Request the relevant state or county agency to proceed with reviewing, processing, and acting upon the permit application; or

(2) Withdraw the permit application and submit a consolidated application to the energy resources coordinator pursuant to chapter , Hawaii Revised Statutes, in section 2 of this Act; provided that if the prospective developer chooses to submit a

consolidated application, the relevant state or county agency shall transmit to the coordinator all documents applicable to the withdrawn permit application, except those that the agency finds are internal work products that may expose the agency to liability if released.

If the prospective developer has submitted two or more permit applications with state or county agencies before July 1, 2008, the prospective developer may select the action under paragraph (1) for some applications and the action under paragraph (2) for other applications.

A draft or final environmental impact statement under preparation by a prospective developer for a state or county permit application submitted before July 1, 2008 may be used for a consolidated application submitted to the coordinator. The prospective developer shall not be required to begin the environmental impact statement process anew if withdrawing the permit application and submitting a consolidated application.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2008-2009 for the establishment and operation of the renewable energy facility siting process established under this Act.

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

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

SECTION 11. This Act shall take effect upon its approval; provided that section 9 shall take effect on July 1, 2008.

INTRODUCED BY:

S.B. NO. 2510

Report Title:
Renewable Energy

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.