
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

1 SECTION 1. The legislature finds that Hawaii's dependence
2 on petroleum for over ninety per cent of its energy needs is
3 more than any other state in the nation. This makes the State
4 extremely vulnerable to any oil embargo, supply disruption,
5 international market dysfunction, and many other factors beyond
6 the control of the State. Furthermore, the continued
7 consumption of conventional petroleum fuel and price volatility
8 can negatively impact the environment and economic health of the
9 people of Hawaii. At the same time, Hawaii has among the most
10 abundant renewable energy resources in the world, in the form of
11 solar, geothermal, wind, biomass, and ocean energy assets.

12 The legislature further finds that increased energy
13 efficiency and use of renewable energy resources would increase
14 Hawaii's energy self-sufficiency, achieving broad societal
15 benefits, including increased energy security, resistance to
16 increases in oil prices, environmental sustainability, economic
17 development, and job creation.



1 To shape Hawaii's energy and environmental future and
2 achieve the goal of energy- and self-sufficiency for the State,
3 efforts must continue on all fronts, integrating new and
4 evolving technologies, seizing upon opportunities to become more
5 economically diversified, and providing incentives and
6 assistance to address barriers.

7 To develop and finance renewable energy facilities, a site
8 for the facilities and access to the site must often be leased,
9 granted as an easement, or mortgaged to provide financing for
10 the project. Renewable energy projects may require site acreage
11 or configurations that do not coincide with existing, already
12 subdivided lot boundaries. For instance, land required for a
13 project may be only a portion of a large legal lot, and it may
14 be impractical or undesirable to lease or convey the entire
15 legal lot for the renewable energy project or to encumber the
16 entire legal lot with a mortgage that provides financing for the
17 project. Currently, however, subdivision laws generally
18 prohibit the transfer of an interest in land that is not an
19 entire subdivided lot or easement that has been approved by the
20 applicable county. With respect to land in the land court
21 system, the additional step of obtaining land court approval is
22 required.



1 Reported Hawaii supreme court cases, including *Whitlow v.*
2 *Jennings*, 40 Haw. 523 (1954), have recognized that transactions
3 involving lots that have not been approved by the county
4 pursuant to subdivision laws may be unenforceable.
5 Unfortunately, the process of obtaining county, state, and land
6 court approval of subdivision and easement maps is relatively
7 time-consuming and often requires more than one year to
8 complete.

9 As recognized by the court in the *Whitlow v. Jennings* case,
10 the purpose of laws requiring county subdivision approval is to
11 protect the consumer purchasing interests in land from
12 substandard subdivisions. However, these laws and court rulings
13 have placed in question the validity of leases of parcels that
14 are less than an entire legal lot, and easements without
15 subdivision approval. This prevents or discourages the use or
16 financing of leases and easements for renewable energy projects.
17 The consumer protection purposes of subdivision laws are not
18 applicable or compelling with respect to sites for renewable
19 energy projects and sophisticated parties developing renewable
20 energy projects. Those subdivision purposes are also outweighed
21 by the State's compelling interests in facilitating,



1 encouraging, and expediting renewable energy projects for the
2 health, safety, and welfare of the residents of Hawaii.

3 Accordingly, the purpose of this Act is to facilitate the
4 financing and development of renewable energy projects by
5 allowing leases and easements pertaining to renewable energy
6 projects, together with mortgages and other conveyances as
7 security for finance, to be created, enforceable, and
8 recordable, without requiring the landowner to obtain formal
9 subdivision approval from the applicable county or other
10 approving agency.

11 SECTION 2. Chapter 201N, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§201N- Exemption from subdivision requirements. (a)

15 Notwithstanding any other law to the contrary:

16 (1) Lands within the agricultural, conservation, or rural
17 state land use district may be subdivided and leased;

18 and

19 (2) Easements may be created and granted over lands within
20 the agricultural, conservation, or rural state land
21 use district,



1 for the purpose of developing and financing a renewable energy
2 project or access to a renewable energy project that is a
3 permitted use in the district.

4 (b) Parcels and easements created under this section shall
5 be legal lots and easements of record for purposes of leasing,
6 granting of easements, and mortgage lending, and shall be exempt
7 from subdivision requirements. Without limiting the generality
8 of the foregoing, fee owners of such lots and easements may:

- 9 (1) Lease all or a portion of such lot as a site for a
10 renewable energy project or access to such project;
11 (2) Grant easements or other possessory interests, whether
12 exclusive or nonexclusive, to use all or a portion of
13 the lot as a renewable energy project site or access
14 to such project; and
15 (3) Record maps, leases, licenses, grants of easements, or
16 other instruments providing for the right to use all
17 or a portion of the lot as delineated on a map for a
18 renewable energy project site or access to such
19 project.

20 (c) The land court, bureau of conveyances, and other
21 governmental agencies shall accept for filing and recording all



1 instruments and maps pertaining to lots and easements created
2 pursuant to this section."

3 SECTION 3. Section 201N-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read:

6 "Subdivision requirement" means any state or county law,
7 state or county permit setting forth standards or requirements
8 for improvements and approvals applicable to the subdivision or
9 consolidation of land, changes in legal boundaries, or the
10 creation or consolidation of parcels, easements, or other
11 interest in land."

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on January 1, 2020.



Report Title:

Renewable Energy Project; Subdivisions

Description:

Exempts renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing. (HB589 HD1)

