
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 greater than any other state in the nation. This makes the
4 State extremely vulnerable to any oil embargo, supply
5 disruption, international market dysfunction, and many other
6 factors beyond the control of the State. Furthermore, the
7 continued consumption of conventional petroleum fuel and price
8 volatility can negatively impact the environment and economic
9 health of the people of Hawaii. At the same time, Hawaii has
10 among the most abundant renewable energy resources in the world,
11 in the form of solar, geothermal, wind, biomass, and ocean
12 energy assets.

13 The legislature further finds that increased energy
14 efficiency and use of renewable energy resources would increase
15 Hawaii's energy self-sufficiency, achieving broad societal
16 benefits, including increased energy security, resistance to
17 increases in oil prices, environmental sustainability, economic
18 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 constitute only a portion of a large legal lot, and
14 it may be impractical or undesirable to lease or convey the
15 entire legal lot for the renewable energy project or to encumber
16 the entire legal lot with a mortgage that provides financing for
17 the project. Currently, however, subdivision laws and county
18 ordinances generally prohibit the transfer of an interest in
19 land that is not an entire subdivided lot or easement that has
20 been approved by the applicable county. With respect to land in
21 the land court system, the additional step of obtaining land
22 court approval is 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 or county ordinances may be
5 unenforceable. Unfortunately, the process of obtaining county,
6 state, and land court approval of subdivision and easement maps
7 is relatively time-consuming and often requires more than one
8 year to complete.

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

1 projects for the health, safety, and welfare of the residents of
2 Hawaii.

3 On February 13, 2009, President Obama signed into law the
4 American Recovery and Reinvestment Act of 2009, Public Law No.
5 111-5, also known as the Federal Stimulus package, providing \$62
6 billion in grant funding, loan guarantees, and tax incentives
7 for renewable energy and energy efficiency programs, including
8 \$6 billion for new loan guarantees aimed at standard renewable
9 projects, such as wind or solar projects, and for electricity
10 transmission projects; \$6.3 billion for Energy Efficiency and
11 Conservation Grants to help state and local governments make
12 investments that make them more energy efficient and reduce
13 carbon emissions; and \$500 million to prepare workers for
14 careers in energy efficiency and renewable energy fields.

15 Accordingly, the purpose of this Act is to facilitate the
16 financing and development of renewable energy projects by
17 allowing leases and easements pertaining to renewable energy
18 projects, together with mortgages and other conveyances as
19 security for finance, to be created, enforceable, and
20 recordable, without requiring the landowner to obtain formal
21 subdivision approval, and instead requiring approval for
22 exemption from subdivision requirements, from the applicable

1 county or other approving agency. This Act will also assist
2 renewable energy projects in Hawaii to be eligible for funding
3 under the Federal Stimulus package.

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

7 **"§201N- Exemption from subdivision requirements. (a)**

8 Notwithstanding any other law or ordinance to the contrary:

9 (1) Lands within the agricultural or conservation state

10 land use district may be leased; and

11 (2) Easements may be created and granted over lands within

12 the agricultural or conservation state land use

13 district,

14 for the purpose of developing and financing a renewable energy

15 project or access to a renewable energy project that is a

16 permitted use in the district, even if the leased land or

17 easement area has not been subdivided as a separate subdivided

18 lot or easement. Leases and easements authorized by this

19 section shall be valid leases and easements for all purposes,

20 but the exemption from subdivision requirements authorized by

21 this section shall be subject to the requirements and

22 limitations set forth in subsection (d).

1 (b) Without limiting the generality of subsection (a), the
2 following may be performed without complying with subdivision
3 requirements:

4 (1) All or a portion of a legal lot may be leased as a
5 site for a renewable energy project or access to the
6 project;

7 (2) Easements or other possessory interests, whether
8 exclusive or nonexclusive, may be granted to use all
9 or a portion of the legal lot as a renewable energy
10 project site or access to the project;

11 (3) Maps, leases, licenses, grants of easements, or other
12 instruments providing for the right to use all or a
13 portion of a legal lot as delineated on a map for a
14 renewable energy project site or access to the project
15 may be recorded; and

16 (4) Mortgages and other security interests may be granted
17 with respect to any lease or easement created pursuant
18 to this section, and the holders of such mortgages or
19 other security interests may foreclose upon the lease
20 or easement covered and otherwise enforce the terms of
21 the mortgage and security documents, subject to

1 compliance with applicable laws other than subdivision
2 requirements.

3 (c) The land court, bureau of conveyances, and other
4 governmental agencies shall accept for filing and recording all
5 instruments and maps pertaining to leases, easements, mortgages,
6 and other security documents authorized pursuant to this
7 section.

8 (d) The exemption from subdivision requirements authorized
9 by this section shall only apply to leases and easements that
10 meet the following requirements and shall be subject to the
11 following limitations:

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

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

20 (3) With respect to leases and easements on lands within
21 an agricultural state land use district, the exemption
22 from subdivision requirements provided by this section

1 shall be for solar energy facilities permitted under
2 section 205-2(d) (6), on land with soil classified by
3 the land study bureau's detailed land classification
4 as overall (master) productivity rating class D or E;

5 (4) With respect to leases and easements on lands within a
6 conservation state land use district, the exemption
7 from subdivision requirements provided by this section
8 shall be for wind energy facilities, including any
9 necessary appurtenances associated with the production
10 and transmission of wind generated energy;

11 (5) The county agency charged with administering
12 subdivisions in the county in which the renewable
13 energy project is to be situated or, if the land is in
14 a conservation state land use district, the department
15 of land and natural resources shall approve the
16 exemption from subdivision requirements. The county
17 agency or the department of land and natural
18 resources, as applicable, shall approve or disapprove
19 the exemption within ninety days after the facility's
20 developer and the owner of the land on which the
21 renewable energy project is to be situated has
22 submitted the preliminary plans and specifications for

1 the facility to the county agency or the department of
2 land and natural resources. If, on the ninety-first
3 day, an exemption has not been approved, it shall be
4 deemed disapproved by the county agency or the
5 department of land and natural resources, whichever is
6 applicable.

7 (e) Nothing in this section shall:

8 (1) Exempt the actual development, construction, or
9 operation of any use, project, or improvement from any
10 applicable state or county laws, ordinances,
11 restrictions, permits, or approvals, including without
12 limitation restrictions on allowable uses or
13 conditions and requirements for adequate
14 infrastructure or mitigation measures;

15 (2) Exempt renewable energy projects from any permit or
16 approval process under chapter 183C, 205, 205A, or
17 343;

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

20 (4) Prevent any agency or authority that issues permits or
21 approvals for renewable energy projects from imposing
22 reasonable and appropriate restrictions on the type of

1 siting, development, construction, and operation of a
2 renewable energy facility to protect agricultural
3 resources and activities, the environment, natural
4 resources, cultural resources and activities, or the
5 health, safety, and welfare of the State.

6 (f) All agencies and authorities that issue permits or
7 approvals for renewable energy projects may adopt rules or
8 procedures to:

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

12 (2) Determine criteria for the appropriate siting of
13 renewable energy project within an agricultural or
14 conservation district; and

15 (3) Identify mitigation measures applicable to renewable
16 energy projects to protect agricultural resources and
17 activities, the environment, natural resources,
18 cultural resources and activities, health, safety, and
19 welfare of the State.

20 (g) This section is not intended to diminish the
21 discretion of any agency or any authority to approve or
22 disapprove any permit application."

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

4 "Subdivision requirements" means all state laws or county
5 ordinances and permits setting forth standards or requirements
6 for improvements and approvals applicable to the subdivision or
7 consolidation of land, changes in legal boundaries, or the
8 creation or consolidation of parcels, easements, or other
9 interest in land."

10 SECTION 4. (a) Any lease or easement (together with any
11 mortgages or other documents encumbering either) that received a
12 subdivision exemption may continue to be effective and shall
13 continue to be exempt from the subdivision requirements granted
14 under this Act; provided that the following restrictions are
15 complied with:

16 (1) The terms of the lease or easement shall restrict the
17 use of the leased land or easement area to the
18 development and operation of a renewable energy
19 project; provided that, to comply with section 205-
20 4.6, agricultural uses and activities shall not be
21 restricted on agricultural land; and

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

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

11 (c) The lease or easement may be transferred or assigned
12 by recordation of a document in the bureau or the land court, as
13 applicable; provided that the restrictions in subsection (a) (1)
14 and (a) (2) are complied with and acknowledged by the transferee
15 or assignee in any conveyance or assignment document.

16 (d) The term of the lease or easement may be extended, and
17 the terms and conditions of the lease or easement may be amended
18 or modified; provided that the restrictions in subsection (a) (1)
19 and (a) (2) are complied with, and that any modification to the
20 lease or easement area is subject to subsection (e).

21 (e) Any action after June 30, 2013 regarding the lease or
22 easement area or the underlying lot or lots shall be subject to

1 subdivision requirements; provided that the county agency
2 charged with administering subdivisions (for land within the
3 agricultural state land use district) or the department of land
4 and natural resources (for land within the conservation state
5 land use district) shall deem all subdivision requirements that
6 were exempt pursuant to the subdivision exemption to be met and
7 the lease or easement area shall only be subject to the
8 additional subdivision requirements necessitated by the
9 additional action. For the purposes of this subsection,
10 "action" refers to any action affecting the underlying land, the
11 lease, or the easement that would require state or county review
12 and approval under the subdivision requirements.

13 For example, a change in location of the easement area
14 would constitute an action under this subsection.

15 (f) For purposes of this section:

16 "Bureau" shall refer to the bureau of conveyances of the
17 State of Hawaii.

18 "Land court" shall refer to the office of the assistant
19 registrar of the land court of the State of Hawaii.

20 "Subdivision exemption" means the exemption to the
21 subdivision requirements received pursuant to this Act.

1 "Subdivision requirements" means all state laws or county
2 ordinances and permits setting forth standards or requirements
3 for improvements and approvals applicable to the subdivision or
4 consolidation of land, changes in legal boundaries, or the
5 creation or consolidation of parcels, easements, or other
6 interest in land.

7 SECTION 5. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval;
9 provided that section 4 of this Act shall take effect on July 1,
10 2013; provided further that sections 2 and 3 of this Act shall
11 be repealed on June 30, 2013.

Report Title:

Renewable Energy Project; Subdivisions

Description:

Exempts leases and easements for renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing. Sunsets 6/30/2013. (SD2)