

STAND. COM. REP. NO.

1345

Honolulu, Hawaii

APR 09 2009

RE: H.B. No. 589
H.D. 1
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred H.B. No. 589, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY FACILITIES,"

begs leave to report as follows:

The purpose of this measure is to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforceable, and recordable, without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency.

Testimony in support of this measure was submitted by one state agency and three organizations. Written testimony presented to your Committee may be reviewed on the Legislature's website.

In order to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased or granted as an easement, and then mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing subdivided lot boundaries. For example, if a renewable energy developer wants to develop a solar farm on five acres of a thirty acre lot, the present subdivision laws require the developer to encumber the entire lot with a mortgage. If the developer wanted

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to transfer interest in the five acre solar farm, the entire lot would have to be subdivided and approved by the county.

Landowners can create leases for less than the entire legal lot, but they may not be enforceable under current Hawaii law, and for this reason, a lessee will have difficulty obtaining title insurance and financing on its leasehold interest and project. Lenders and investors require valid leases and easements which may entail the recordation of maps, leases, licenses, grants of easements, or other instruments securing interests. However, in *Whitlow v. Jennings*, 40 Haw. 523 (1954), the Hawaii State Supreme Court asserted that a subdivision permit must be obtained prior to the recording of these instruments. This type of legal restriction prevents renewable energy producers from obtaining interim financing. This measure will ensure renewable energy developers may obtain necessary interim financing for feasibility and statutory studies, such as environmental assessments.

The American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, also known as the Federal Stimulus package, signed into law by President Obama provides \$62 billion in grant funding, loan guarantees, and tax incentives for renewable energy and energy efficiency programs, including \$6 billion for loan guarantees for wind or solar projects. Your Committee finds that this measure will facilitate the financing and development of renewable energy projects and assist these projects in obtaining funding under the Federal Stimulus package.

However, your Committee understands that this measure may be construed as interfering with county home rule, which allows each county to make the best decisions for its residents. Therefore, your Committee is amending the measure in order to proceed cautiously by limiting the type of renewable energy project and the length of time for the issuance of subdivision exemptions.

Your Committee has amended this measure by:

- (1) Restricting the applicability of the exemption from subdivision approval to agricultural or conservation state land use districts;
- (2) Clarifying that the use of the leased land or easement area shall be restricted in the lease or easement agreement to only renewable energy projects, subject to the requirements of section 205-4.6, Hawaii Revised



Statutes, prohibiting the restriction of agricultural uses;

- (3) Limiting the subdivision exemption to renewable energy projects that are:
 - (A) Solar energy facilities on agricultural state land permitted under section 205-2(d)(6), Hawaii Revised Statutes, which consists of land with soil classified by the Land Study Bureau's detailed land classification as overall (master) productivity rating class D or E; or
 - (B) Wind energy facilities on conservation state land, including any necessary appurtenances;
- (4) Removing the automatic termination provision;
- (5) Providing a ninety day approval period for the county agency or Department of Land and Natural Resources to act upon an application for subdivision exemption, and providing that on the ninety-first day any application which has not been approved shall be deemed disapproved;
- (6) Clarifying that this measure shall not exempt renewable energy projects from any permit or approval process under chapters 183C Conservation District, 205 Land Use Commission, 205A Coastal Zone Management, or 343 Environmental Impact Statement, Hawaii Revised Statutes;
- (7) Permitting any agency or authority that issues permits or approvals for renewable energy projects to impose reasonable rules on the siting, development, construction, and operation of a renewable energy facility to protect agricultural resources and activities, the environment, natural resources, cultural resources and activities, health, safety, or welfare of the State;
- (8) Specifying the categories of rules that may be adopted by the agencies and authorities that issue permits or approvals for renewable energy projects including the type of project, criteria for appropriate siting, and identifying mitigation measures to protect agricultural resources and activities, the environment, natural



resources, cultural resources and activities, or the health, safety, and welfare of the State;

- (9) Establishing a sunset date of June 30, 2013;
- (10) Providing that any lease or easement approved for a subdivision exemption prior to June 30, 2013 that continues to comply with the restricted use requirements shall remain valid after the sunset of the statutory provisions, clarifying that the interest may be transferred or foreclosed upon, and may be extended; and
- (11) Making technical, nonsubstantive changes for style.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 589, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 589, H.D. 1, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,



CLAYTON HEE, Chair



