

JAN 26 2011

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY ENTERPRISE ZONES.

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

1 SECTION 1. The legislature finds that Hawaii is dependent
2 on imported oil for more than ninety-two per cent of its energy
3 needs, making it the most vulnerable state in the nation to
4 economic disruption in the event of upheavals in the world oil
5 market, while Hawaii's residents and businesses are burdened
6 with the highest fuel costs in the nation.

7 Hawaii law already requires the establishment of policies
8 designed to increase energy self-sufficiency and energy
9 security, including the use of renewable resources. Hawaii is
10 blessed with an abundance of renewable energy resources,
11 including wind, solar, hydropower, geothermal, and ocean
12 technologies such as wave energy and thermal energy conversion.
13 Act 272, Session Laws of Hawaii 2001, recognized "the economic,
14 environmental, and fuel diversity benefits of renewable energy
15 resources" and the need to "encourage the establishment of a
16 market for renewable energy in Hawaii using the State's
17 renewable energy resources...." Act 272 further noted that
18 "while Hawaii is a national leader in the development of



1 renewable energy resources for electricity production, there may
2 be more that the State can do to encourage the development and
3 implementation of renewable energy."

4 The legislature further finds that the establishment of
5 renewable energy enterprise zones in the State that provide a
6 range of county and state incentives will not only work towards
7 reducing our dependence on imported fossil fuels, but will
8 assist in stimulating the creation of integrated campuses that
9 will attract a critical nucleus of renewable energy facilities
10 and create a large number of highly skilled jobs in the
11 renewable energy field.

12 The purpose of this Act is to encourage the establishment
13 of modern renewable energy facilities within the State by
14 establishing a renewable energy enterprise zone program that
15 initially consists of a single pilot renewable energy enterprise
16 zone in Kalaeloa. Limiting potential investments in a renewable
17 energy enterprise zone to Kalaeloa will minimize the impact on
18 the State and allow the State to evaluate the zone's impact
19 without negatively affecting income streams.

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



1 "CHAPTER

2 RENEWABLE ENERGY ENTERPRISE ZONES

3 § -1 Definitions. As used in this chapter:

4 "Department" means the department of business, economic
5 development, and tourism.

6 "Establishment" means a single physical location where
7 renewable energy or research and development services are
8 provided in a renewable energy facility. A qualified business
9 may include one or more establishments, any number of which may
10 be in a renewable energy enterprise zone.

11 "Full-time employee" means any employee for whom the
12 employer is legally required to provide employee fringe
13 benefits.

14 "Renewable energy enterprise zone" means any area in the
15 State declared by the department to be eligible for benefits
16 pursuant to this chapter.

17 "Renewable energy facility" means a facility engaged in the
18 production, generation, or research and development of energy
19 technologies using the following sources:

- 20 (1) Wind;
21 (2) The sun;
22 (3) Falling water;



1 (4) Biogas, including landfill and sewage-based digester
2 gas;

3 (5) Geothermal;

4 (6) Ocean water, currents, and waves, including ocean
5 thermal energy conversion;

6 (7) Biomass, including biomass crops, agricultural and
7 animal residues and wastes, and municipal solid waste
8 and other solid waste;

9 (8) Biofuels; and

10 (9) Hydrogen produced from renewable energy sources.

11 "Qualified business" means any renewable energy facility
12 that is:

13 (1) Authorized to do business in this State; and

14 (2) Is located within the renewable energy enterprise
15 zone.

16 "Taxes due the State" means income taxes due under chapter
17 235.

18 § -2 Administration. The department shall administer
19 this chapter and have the power and duty to:

20 (1) Monitor the implementation and operation of this
21 chapter;



- 1 (2) Conduct a continuing evaluation program of the
2 renewable energy enterprise zones;
 - 3 (3) Assist the counties in obtaining the reduction of
4 rules within renewable energy enterprise zones;
 - 5 (4) Submit annual reports to the legislature and the
6 governor evaluating the effectiveness of the program
7 and proposing any recommended legislation;
 - 8 (5) Administer and enforce rules adopted by the
9 department; and
 - 10 (6) Administer this chapter in a manner such that the
11 areas designated as renewable energy enterprise zones
12 will provide the most benefit to the areas and the
13 State.
- 14 § -3 Renewable energy enterprise zone designation;
- 15 approval. (a) Within thirty days of receiving:
- 16 (1) A description of a proposed location in a county for a
17 renewable energy enterprise zone; and
 - 18 (2) A general statement identifying proposed county
19 incentives to complement any state and federal
20 incentives;



1 from the governing body of the county, the department shall
2 designate the proposed area as a renewable energy enterprise
3 zone.

4 (b) The department shall acquire from the county any
5 additional information that the department deems necessary, and,
6 within sixty days of the date of designation pursuant to
7 subsection (a), the department shall approve the establishment
8 of the renewable energy enterprise zone for a period of seven
9 years.

10 § -4 Duplicative tax incentives; prohibition. There
11 shall be no duplication of existing state tax incentives to
12 qualified businesses that locate in a renewable energy
13 enterprise zone.

14 § -5 Rules. (a) The department, in consultation with
15 the department of taxation, shall adopt rules pursuant to
16 chapter 91 to implement this chapter, including rules relating
17 to health, safety, building, planning, zoning, and land use.
18 Rules adopted pursuant to this section shall supersede all other
19 inconsistent ordinances and rules relating to the use, zoning,
20 planning, and development of land and construction in a
21 renewable energy enterprise zone; provided that rules adopted
22 pursuant to this section shall conform to existing law, rules,



1 and ordinances as closely as possible to comply with minimum
2 standards for energy efficiency, health, and safety.

3 (b) The department may provide by rule that lands within a
4 renewable energy enterprise zone shall not be developed beyond
5 existing uses or that improvements thereon shall not be
6 demolished or substantially reconstructed or provide other
7 restrictions on the use of the zone.

8 § -6 Eligibility; qualified business; sale of property
9 or services. (a) Any renewable energy facility may be eligible
10 to be designated a qualified business for purposes of this
11 chapter if:

12 (1) The renewable energy facility begins operations in a
13 renewable energy enterprise zone and:

14 (A) During each taxable year has at least per
15 cent of its renewable energy enterprise zone
16 establishment's gross receipts attributable to
17 its operation within the renewable energy
18 enterprise zone;

19 (B) Increases its average annual number of full-time
20 employees employed at the facility by at least
21 per cent by the end of its first tax year
22 of participation; and



1 (C) During each subsequent taxable year maintains the
2 level of employment in paragraph (1)(B) or
3 greater for full-time employees; or

4 (2) The renewable energy facility:

5 (A) Is actively engaged in the operation of a
6 renewable energy facility in an area immediately
7 prior to the area being designated a renewable
8 energy enterprise zone;

9 (B) Meets the requirements of paragraph (1)(B); and

10 (C) Increases its average annual number of full-time
11 employees employed at the renewable energy
12 facility's establishment or establishments
13 located within the renewable energy enterprise
14 zone by at least per cent annually.

15 (b) After approval of the renewable energy enterprise
16 zone, each qualified business in the renewable energy enterprise
17 zone shall annually complete and submit to the department, on an
18 application prescribed by the department, the information
19 necessary for the department to determine whether the renewable
20 energy facility qualifies or continues to qualify as a qualified
21 business. If the department determines that the renewable
22 energy facility qualifies as a qualified business, the

1 department shall approve the application and notify the
2 department of taxation and the relevant governing body of the
3 county.

4 (c) A completed form approved by the department, referred
5 to in subsection (b), shall be prima facie evidence of the
6 eligibility of a renewable energy facility for the purposes of
7 this section.

8 (d) Any operations or services provided by a renewable
9 energy facility outside of the renewable energy enterprise zone
10 shall not be included for the purposes of determining gross
11 receipts attributable to the active provision of services under
12 subsection (a).

13 § -7 State business tax credit. (a) The department
14 shall certify annually to the department of taxation the
15 applicability of the tax credit provided in this section for a
16 qualified business against any income taxes imposed under
17 chapter 235. The credit shall be:

18 (1) Eighty per cent of the tax due for the first taxable
19 year that the business qualifies as a qualified
20 business;



1 (2) Seventy per cent of the tax due for the second taxable
2 year that the business qualifies as a qualified
3 business;

4 (3) Sixty per cent of the tax due in the third taxable
5 year that the business qualifies as a qualified
6 business;

7 (4) Fifty per cent of the tax due in the fourth taxable
8 year that the business qualifies as a qualified
9 business;

10 (5) Forty per cent of the tax due in the fifth taxable
11 year that the business qualifies as a qualified
12 business;

13 (6) Thirty per cent of the tax due in the sixth taxable
14 year that the business qualifies as a qualified
15 business; and

16 (7) Twenty per cent of the tax due in the seventh year
17 that the business qualifies as a qualified business.

18 Any tax credit not used in a taxable year shall not be
19 applied to future taxable years.

20 (b) When a partnership is eligible for a tax credit under
21 this section, each partner shall be eligible for the tax credit
22 in proportion to that partner's income tax liability from the



1 partnership. Any qualified business earning taxable income from
2 the provision of the qualified business's services, both within
3 and without the renewable energy enterprise zone, shall allocate
4 and apportion its taxable income attributable to that provision
5 of services. Tax credits provided for in this section shall
6 only apply to taxable income of a qualified business
7 attributable to the services provided within the renewable
8 energy enterprise zone.

9 (c) In addition to any other tax credit authorized under
10 this section, a qualified business shall be entitled to a tax
11 credit against any taxes due the State in an amount equal to a
12 percentage of unemployment taxes paid pursuant to chapter 383.
13 The amount of the credit shall be equal to:

- 14 (1) Eighty per cent of the unemployment taxes paid for
15 during the first taxable year that the business
16 qualifies as a qualified business;
- 17 (2) Seventy per cent of the unemployment taxes paid for
18 the second year that the business qualifies as a
19 qualified business;
- 20 (3) Sixty per cent of the unemployment taxes paid for the
21 third year that the business qualifies as a qualified
22 business;



1 (4) Fifty per cent of the unemployment taxes paid for the
2 fourth year that the business qualifies as a qualified
3 business;

4 (5) Forty per cent of the unemployment taxes paid for the
5 fifth year that the business qualifies as a qualified
6 business;

7 (6) Thirty per cent of the unemployment taxes paid for the
8 sixth year that the business qualifies as a qualified
9 business; and

10 (7) Twenty per cent of the unemployment taxes paid for the
11 seventh year that the business qualifies as a
12 qualified business.

13 (d) Tax credits provided for in subsection (c) shall apply
14 only to the unemployment tax paid on employees employed at the
15 qualified business's establishment or establishments located
16 within the renewable energy enterprise zone. Any tax credit not
17 used in a taxable year shall not be applied to future tax years.

18 § -8 State general excise and use tax exemptions. The
19 department shall certify annually to the department of taxation
20 that any qualified business is exempt from the payment of taxes
21 pursuant to chapter 237 on the gross proceeds from the provision
22 of renewable energy services and taxes pursuant to chapter 238



1 for purchases by the qualified business. The gross proceeds
2 received by a contractor licensed under chapter 444 shall be
3 exempt from taxation under chapter 237 for construction within a
4 renewable energy enterprise zone performed for a qualified
5 business within a renewable energy enterprise zone. The
6 exemption in this section shall extend for a period not to
7 exceed seven years after the effective date of this chapter.

8 § -9 Local incentives. (a) A county may propose local
9 incentives, including:

- 10 (1) Reduction of permit fees;
- 11 (2) Reduction of user fees; and
- 12 (3) Reduction of real property taxes.

13 (b) A county may propose measures for regulatory
14 flexibility including:

- 15 (1) Special zoning districts;
- 16 (2) Permit process reform;
- 17 (3) Exemptions from local ordinances; and
- 18 (4) Other public incentives proposed in the locality's
19 application, which shall be binding upon the locality
20 upon designation of the renewable energy enterprise
21 zone.



1 § -10 Termination of renewable energy enterprise zone.

2 Upon designation of the area as a renewable energy enterprise
3 zone, the proposals for regulatory flexibility, tax incentives,
4 and other public incentives specified in this chapter shall be
5 binding upon the governing body of the county for a period of
6 seven years. If the governing body of the county is unable or
7 unwilling to provide any of the incentives set forth in section
8 -9 or other incentives acceptable to the department, and
9 the department has not adopted rules pursuant to section -5
10 that supersede inconsistent ordinances and rules relating to the
11 use, zoning, planning, and development of land and construction
12 in a renewable energy enterprise zone, then the renewable energy
13 enterprise zone shall terminate. Qualified businesses located
14 in the renewable energy enterprise zone shall be eligible to
15 receive the tax incentives provided by this chapter even though
16 the zone designation has terminated. No renewable energy
17 facility may become a qualified business after the date of zone
18 termination."

19 SECTION 3. The governing body of the city and county of
20 Honolulu, pursuant to this Act, shall transmit to the director
21 of business, economic development, and tourism, no later than
22 November 30, 2011, a description of a proposed location in



1 Kalaeloa as a pilot renewable energy enterprise zone. The
2 director of business, economic development, and tourism,
3 pursuant to this Act, shall designate the proposed area as a
4 renewable energy enterprise zone for a period of seven years.

5 SECTION 4. The department of business, economic
6 development, and tourism, in consultation with the department of
7 taxation, shall submit a written report to the legislature by
8 December 31 of each year, beginning in 2012, regarding the
9 implementation of the pilot renewable energy enterprise zone in
10 Kalaeloa, including an evaluation of the success or failure of
11 the pilot renewable energy enterprise zone to fulfill its
12 intended purpose.

13 SECTION 5. It is the intent of this Act not to jeopardize
14 the receipt of any federal aid nor to impair the obligation of
15 the State or any agency thereof to the holders of any bond
16 issued by the State or by any agency, and to the extent, and
17 only to the extent, necessary to effectuate this intent, the
18 governor may modify the strict provisions of this Act, but shall
19 promptly report any modification with reasons therefore to the
20 legislature at its next regular session thereafter for review by
21 the legislature.



1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act, which can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 8. This Act shall take effect upon its approval;
11 provided that this Act shall apply to taxable years beginning
12 after December 31, 2010, and shall be repealed on January 1,
13 2018.

14

INTRODUCED BY:

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Report Title:

Renewable Energy Enterprise Zones; Pilot Project in Kalaeloa

Description:

Establishes renewable energy enterprise zones in the State to encourage the development of renewable energy technologies. Creates a 7-year pilot renewable energy enterprise zone in Kalaeloa.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

