April 27, 2016

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 27, 2016, the following bill was signed into law:

HB2416 RELATING TO RENEWABLE ENERGY  
ACT 027 (16)

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i
A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

SECTION 1. The legislature finds that chapter 201N, Hawaii Revised Statutes, enacted by Act 207, Session Laws of Hawaii 2008, assigns the director of business, economic development, and tourism, as the State's energy resources coordinator, the responsibility of implementing a renewable energy facility siting process for state and county permits for the siting, development, construction, and operation of renewable energy facilities.

According to the state auditor's Report No. 14-13, no project has completed the siting process and the department of business, economic development, and tourism has not implemented a siting process program. The auditor also reported that the renewable energy facility siting special fund, created pursuant to Act 207 for the purpose of funding the operation and administration of the renewable energy facility siting process, maintained a balance of $0 from the beginning of fiscal year

HB LRB 16-0604.doc
2009-2010 to the end of fiscal year 2013-2014, and had not demonstrated the capacity to be self-sustaining.

The department of business, economic development, and tourism's January 12, 2016 budget briefing report indicated that the renewable energy facility siting special fund is expected to have an unencumbered cash balance of $0 throughout fiscal year 2015-2016.

Accordingly, the legislature finds that chapter 201N, Hawaii Revised Statutes, should be repealed due to lack of implementation. The purpose of this Act is to repeal chapter 201N, Hawaii Revised Statutes, relating to the renewable energy facility siting process.

SECTION 2. Section 201-12.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The renewable energy facilitator shall have the following duties:

(1) Facilitate the efficient permitting of renewable energy projects, including:

(A) The land parcel on which the facility is situated;
(B) Any renewable energy production structure or equipment;

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

(D) Any on-site infrastructure necessary for the production of electricity or biofuel from the renewable energy site;

(2) Initiate the implementation of key renewable energy projects by permitting various efficiency improvement strategies identified by the department;

(3) Administer the day-to-day coordination for renewable energy projects on behalf of the department [and the day-to-day operations of the renewable energy facility siting process established in chapter 201N]; and

(4) Submit periodic reports to the legislature on renewable energy facilitation activities [and the progress of the renewable energy facility siting process]."

SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:
"(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and the producers are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public. [To assist the energy resources coordinator in effectuating the purposes of chapter 201N, the public utilities commission may develop reasonable guidelines and timetables for the creation and implementation of power purchase agreements.]"

SECTION 4. Section 343-2, Hawaii Revised Statutes, is amended by deleting the definition of "renewable energy facility". 

[""Renewable-energy-facility"" has the same meaning as defined in section 201N-1."

SECTION 5. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:
"(e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules. [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; and

(3) The applicant shall respond in writing to comments received during the review and the applicant 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 publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.
The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of the determination with the office. The office, in turn, shall
publish the determination of acceptance or nonacceptance of the
final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of
receipt of the final statement, shall notify the applicant and
the office of the acceptance or nonacceptance of the final
statement. The final statement shall be deemed to be accepted
if the agency fails to accept or not accept the final statement
within thirty days after receipt of the final statement;
provided that the thirty-day period may be extended at the
request of the applicant for a period not to exceed fifteen
days.

In any acceptance or nonacceptance, the agency shall
provide the applicant with the specific findings and reasons for
its determination. An applicant, within sixty days after
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 6. Chapter 201N, Hawaii Revised Statutes, is repealed.

SECTION 7. Any employee hired by the department of business, economic development, and tourism pursuant to section 201N-2, Hawaii Revised Statutes, before the effective date of this Act and is transferred to another position within the department as a consequence of this Act may retain the employee's exempt status with respect to chapters 76 and 89, Hawaii Revised Statutes, but shall not be appointed to a civil service position as a consequence of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employee possesses legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of business, economic development, and tourism may prescribe the
duties and qualifications of the employee and fix the employee's
salary without regard to chapters 76 and 89, Hawaii Revised
Statutes.

SECTION 8. (a) Any proceeds generated and deposited into
the renewable energy facility siting special fund pursuant to
Act 207, Session Laws of Hawaii 2008, that are unexpended and
unencumbered as of the effective date of this Act shall be
deposited into the general fund on the effective date of this
Act.

(b) All records, equipment, machines, files, supplies,
contracts, books, papers, documents, maps, and other personal
and real property heretofore made, used, acquired, or held by
the energy resources coordinator for the purposes of chapter
201N, Hawaii Revised Statutes, shall be maintained by the Hawaii
state energy office or transferred to another appropriate agency
within the department of business, economic development, and
tourism.

SECTION 9. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.
SECTION 10. Statutory material to be repealed is bracketed and stricken.

SECTION 11. This Act shall take effect on July 1, 2016.

INTRODUCED BY:

APPROVED this 27 day of APR, 2016

GOVERNOR OF THE STATE OF HAWAI'I